

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of May 23, 2014, by and between Petitioner McKinleyville Community Services District (“MCSD”) and Respondent County of Humboldt (the “County”). MCSD and the County are collectively referred to as the “Parties.”

RECITALS

A. In August 2011, the County certified a Subsequent Environmental Impact Report (“2011 SEIR”) for adopting the “2010 Humboldt County Housing Element Implementation Plan Amendment, Zone Reclassification, and Local Coastal Plan Amendment” (“August Rezoning Project”), adopted changes to the General Plan Land Use and zoning designations for the selected properties under the August Rezoning Project, and approved amendments to the Humboldt County Zoning Ordinance.

B. On September 29, 2011, MCSD filed a Petition for Writ of Mandate in Humboldt County Superior Court (*McKinleyville Community Services District, et al. v. County of Humboldt, et al.*, Case No. CV110632 (the “Action”)) alleging that, in taking the actions on the August Rezoning Project, the County failed to comply with the California Environmental Quality Act (“CEQA”) (Pub. Resources Code, § 21000 et seq.), the State Planning and Zoning Law, and the California Water Code.

C. On March 13, 2012, the County considered an Addendum to the 2011 SEIR (“March 2012 Addendum”) and adopted amendments to the General Plan Land Use and Zoning designations for four parcels previously rezoned under the August Rezoning Project and adopted amendments to the Humboldt County Housing Element to incorporate into the Affordable Multifamily Land Inventory the four sites rezoned and the sites rezoned under the August Rezoning Project (collectively, “March Rezoning and Housing Element Amendments Project”).

D. On May 22, 2012, MCSD filed an Amended and Supplemental Petition for Writ of Mandate (“First Amended Petition”) adding new facts and alleging further failures to comply with CEQA, the State Planning and Zoning Law, and the California Water Code.

E. On August 28, 2012, the County approved Resolution No. 12-17, adopting amendments to the Humboldt County Housing Element and deleting three sites from the Affordable Multifamily Land Inventory (collectively, the “August 2012 Housing Element Amendments Project”). In approving the August 2012 Housing Element Amendments Project, the County prepared another Addendum (“August 2012 Addendum”) to the 2011 SEIR.

F. On October 4, 2012, MCSD filed a Second Amended and Supplemental Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief (referred to herein as “Petition”), which added new facts and allegations to its petition to challenge the County’s August 28, 2012 approval of the August 2012 Addendum and amendments to the Humboldt County Housing Element.

G. MCSD’s Petition seeks a peremptory writ of mandate directing the County to vacate and set aside certification of the 2011 SEIR, the March 2012 Addendum, and the August 2012 Addendum, and approval of the August Rezoning Project, the March Rezoning and Housing Element Amendments Project, and the August 2012 Housing Element Amendments Project (collectively, the “Projects”) on the grounds that adequate compliance with CEQA, the State Planning and Zoning Law, and the Water Code did not precede those actions, and to comply with CEQA, the State CEQA Guidelines, the State Planning and Zoning Law, and the Water Code in any subsequent actions taken. MCSD also seeks appropriate injunctive and declaratory relief and attorney’s fees.

H. On January 28, 2013, pursuant to a motion for change of venue filed by MCSD, the Action was ordered transferred to the Sonoma County Superior Court (Case No. SCV-253240).

I. Petitioner MCSD and Respondent County of Humboldt have engaged in settlement negotiations and created a working group with representatives from each entity to seek resolution of the Action.

J. The Parties recognize and acknowledge that the County of Humboldt is presently in the process of revising the Housing Element to its General Plan which is required by statute with the anticipation that the statutorily required Housing Element review and revisions thereto shall be adopted in the spring/summer of 2014 and that such revisions provide an opportunity for actions to be approved by Respondent County that

address the concerns of Petitioner which are the subject of the above-referenced pending litigation.

K. As a result of the ongoing negotiations of the working group and in consideration of concerns raised by MCSD relative to long term residential planning and development and the ability of MCSD to service said development, the representatives of the County's Planning and Building Department are in agreement to support and recommend adoption of policies, standards, and implementation measures in its upcoming General Plan Housing Element revision, and revisions to internal Planning and Building Department policies and guidelines for review of development projects with revisions to existing zoning regulations, if needed to obtain the following goals:

Goal One: Qualification and inclusion of all types of low and moderate income housing to be credited toward the County's RHNA allocation/requirement for those income levels;

Goal Two: Permitting of mixed use of residential in commercial developments;

Goal Three: Recognition and consideration of impacts on special district finances that result from implementation of affordable housing incentives and identification and implementation of mitigation for any adverse financial impacts;

Goal Four: Recognition in project approval of special district waste water capacity restrictions that may exist.

L. The Parties have determined that it is desirable and in their mutual best interests to settle the Action and all of their disputes relating to the Projects on the terms and conditions set forth in this Agreement.

M. The Parties acknowledge that the goals and objectives recited in this Agreement and the revised Housing Element are currently being reviewed by the Humboldt County Planning Commission and, thereafter, the Humboldt County Board of Supervisors. The Parties acknowledge that, in the event the Planning Commission or the Board materially changes the goals recited in the Housing Element in a manner that detrimentally impacts the terms and conditions of this Agreement, the Parties may need to re-negotiate affected provisions in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and/or covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. RECITALS

The above recitals are true and are hereby incorporated by reference as part of this Agreement.

2. STAY OF LITIGATION

Within five business days of the effective date of this Agreement, the Parties shall file a joint stipulation with the Superior Court, County of Sonoma, requesting that the Court stay the present litigation to allow for the execution of this Agreement.

3. OBLIGATIONS OF COUNTY

3.1 General Plan Housing Element Policies and Implementation Measures, and Internal Department Guideline Revisions.

In order to implement the mutually accepted settlement statement goals set forth above in Recital K (referred to herein as the "Settlement Goals"), the County Planning and Building Department agrees to recommend adoption of the actions taken by it to date and to further revisions to policies, and procedures as follows:

GOAL ONE: Qualification and inclusion of all types of low and moderate income housing to be credited toward the County's RHNA allocation/requirement for those income levels.

The Parties acknowledge that the County has completed a draft of its revised Housing Element that has presently been circulated for comment that has included 113 units identified for potential second unit development, 33 units identified as multi-family units principally allowed in commercial areas and 39 units of planned affordable housing construction by Native American Tribes as well as the following policies, standards and implementation measures all of which seek to implement the above-stated goal: H-P4, H-

P5, H-P13, H-P17, H-P18, H-P26, H-S1, H-S6, H-S8, H-IM3, H-IM8, H-IM13, H-IM14, H-IM17, H-IM29 and H-IM32.

GOAL TWO: Permitting of mixed use of residential and commercial developments.

The Parties acknowledge that the County has identified in its draft revisions to its Housing Element and its residential land inventory 33 multi-family units to be principally allowed in commercial areas. In addition, the County Planning and Building Department shall support all appropriate ordinance changes within the McKinleyville Community Plan for the McKinleyville Town Center to encourage the permitting of residential occupancy above existing and future commercial developments.

GOAL THREE: Recognition and consideration of impacts on special district finances that result from implementation of affordable housing incentives and identification and implementation of mitigation for any adverse impacts.

The County shall review and identify those categories of development fees eligible for waiver as an incentive for the development of affordable housing. With regard to those categories of fees for which a waiver will have a direct and adverse financial effect on special districts within the County, fee waiver shall be avoided and other mechanisms utilized instead to induce affordable housing to the maximum extent possible consistent with the applicable zoning ordinances.

Waiver of development fees as an incentive for the development of affordable housing only occurs with those projects that qualify for a density bonus. In order to insure that special districts have sufficient notice of projects wherein waiver of development fees with regard to such projects is being considered the County shall provide all special districts with notification of all applications received for such projects and prominently display on the first page of such notification that the development qualifies for a "density bonus." If any special district requests that a particular fee waiver be denied the County will then analyze the financial impacts that the granting or denial of the requested fee waiver will have on the special district and the proposed project. This includes a consideration by the County prior to approval of a fee waiver of any adverse impacts, either specific or cumulative, to the ability of the special district to implement projects that otherwise would be funded by the fee. That analysis shall be identified and

set forth in a separate section of the staff report prepared by the County for consideration of the Planning Commission and, where necessary, to the Board of Supervisors.

In addition, in developing the housing trust fund called for in the County Housing Element implementation measure H-IM1, the County Department overseeing said fund shall include guidelines that incorporate as a priority use of said funds subsidizing the payment of fees eligible for waiver associated with the development of affordable housing, the waiver of which is shown by any special district in which the development is proposed to adversely affect that district's ability to implement projects that otherwise would be funded by the fees eligible for waiver .

GOAL FOUR: Recognition in project approval of special district waste water capacity restrictions that may exist.

The Parties acknowledge that the County has included in its draft Housing Element the following policy and implementation measures that are intended to attain this stated goal: H-P11 and H-IM9. In addition, the County Planning and Building Department shall review its internal policies and guidelines to insure they give direction to emphasize the need for County staff to: 1) work with developers of multi-family projects, the full development of which is constrained by wastewater capacity restrictions within a special district, to revise the project through reduction of units, site location, lot line adjustment, minor subdivision, or other method to allow the project to meet the wastewater capacity restrictions and maintain density requirements for qualification as affordable housing, and 2) recognize that a rezone to reduce density to accommodate special district wastewater restrictions is allowed as long as the number of units available in the affordable housing inventory do not fall below the RHNA number assigned to the County or as long as alternative sites are identified to replace any deficiency in the RHNA number that results from said rezone.

To help facilitate early review by special districts of available waste water discharge capacity to service larger developments the County Planning and Building Department shall create a database with information sufficient to identify those parcels within any special district boundaries that a special district requests the County to include for the purpose of providing early notification of special district concerns that would be applicable to any development on said parcel. Upon receiving an application for any

discretionary permit or for development of one or more structures on any parcel listed in the data base the County Planning and Building Department shall issue a letter to both the applicant and special district advising that there may be waste water constraints applicable to the development and recommending that the applicant make early inquiry to the special district in which the project is located. The County will include all of the parcels listed on **Exhibit A**, attached hereto, to the database, and will update the list from time to time as requested by MCSD.

3.2 Submission of Revised Housing Element to HCD

The Parties recognize that, prior to approval by the County, the new draft Housing Element and any amendments thereto must be approved by the HCD pursuant to §65585 of the Government Code. The County agrees that it shall submit the draft Housing Element and any subsequent amendments for review and approval by HCD at least 45 days prior to its adoption by the County. In the event that, HCD rejects any County submissions which are consistent with the Settlement Goals, the County shall work with MCSD to revise the Settlement Goals terms to address comments from HCD while still satisfying the original intent of the Settlement Goals. The County shall then re-submit its' draft with any revisions agreed upon to HCD for approval. If, after pursuing this procedure, HCD continues to reject the County's submission, the County shall have the option to either repeat the procedure set forth herein or terminate any further revisions to the Housing Element to satisfy the intent of the applicable Settlement Goals and instead make the necessary revisions to the Housing Element in compliance with any HCD directions which would result in HCD certifying the Housing Element after it is adopted by the County. MCSD would then be free from any obligations set forth in this agreement and, at its option, may request the court to lift the stay referenced in paragraph 2 above and pursue the litigation referenced herein.

3.3 CEQA Compliance for Settlement Strategy

3.3.1 Consultation for CEQA Compliance

The parties recognize that the County shall exercise its independent judgment in determining what level of environmental review is necessary to process the revised Housing Element that implements the settlement strategy. The County has provided

notice to MCSD of the environmental review procedure that it intends to utilize for approval of its draft Housing Element. In the event there are additional actions taken by the County to implement the Settlement Strategy that requires CEQA compliance, the County will provide MCSD notice of the environmental review procedures it intends to utilize to allow consultation and comment prior to final determination by the County as to what environmental review is initiated.

3.3.2 Filing a Notice of Determination

The County agrees that it will file a Notice of Determination (“NOD”) with the Humboldt County Clerk within five days of the County approving the Housing Element which reflects the Settlement Strategy as set forth herein. The County shall notify MCSD when the NOD has been posted by the Humboldt County Clerk.

3.3.3 Substantial Likelihood of Legal Challenge

If at any time the County receives notification from any person or entity that a legal challenge is contemplated challenging any of the measures set forth herein to realize the Settlement Strategy including any of the policies and implementation measures of the new Housing Element identified herein, County shall notify MCSD and invite comment and consultation as to the reasonableness of the threatened litigation and possible revisions that can be made to those procedures that are being challenged so as to avoid litigation. If the County and MCSD agree that revisions to the implementation procedures set forth herein are reasonable including amendment to either a submitted or certified Housing Element, the County and MCSD shall work together to obtain revisions that are agreed by the parties to be consistent with the Settlement Strategy.

The County reserves the right, especially in the event its Housing Element has been certified, to choose to defend its Housing Element or any other adopted procedures and guidelines.

4. OBLIGATIONS OF MCSD

4.1 Dismissal of Petition for Writ of Mandate

If the County (i) timely implements the procedures set forth herein, (ii) receives approval from HCD for its’ proposed Housing Element, (iii) files an NOD with the Humboldt County Clerk as set forth in Section 3.3.2 above, and (iv) does not draw a new

lawsuit challenging the approval within 30 days of the posting by the Humboldt County Clerk of the NOD of the County's action, MCSD shall take all of the steps necessary to dismiss with prejudice its pending Action in Sonoma County Superior Court. If one or more of the conditions listed above does not occur, MCSD is under no obligation to dismiss its pending Action.

4.2 Litigation Over Settlement Strategy

The Parties understand and recognize that the approval of the Housing Element set forth in the Settlement Strategy by the County and HCD is a desired outcome of this Settlement Agreement, and that protracted litigation over the approval of the terms of the Settlement Strategy is not in the interests of the County or MCSD. In the event that there is a third party legal challenge to the implementation of the Settlement Strategy as set forth herein and/or the environmental review prepared for its adoption, in order to preserve the causes of action in MCSD's original litigation and to avoid a potential waiver of its claims, after the County's approval and HCD's certification of the Housing Element set forth in the Settlement Strategy, MCSD and the County shall enter into a tolling agreement to stay all litigation deadlines and proceedings for MCSD to challenge the County's approval of the Housing Element set forth in the Settlement Strategy until either (a) the new legal challenge can be settled or resolved, or (b) it appears that the new legal challenge cannot be settled or resolved and must be litigated.

If the new legal challenge can be settled or resolved, the County shall meet and confer with MCSD with the objective of facilitating the satisfaction of the obligations of this Agreement and prompt dismissal of any petitioners' lawsuit. While the decision on whether to settle any such new litigation shall ultimately be within the discretion of the County, in the event MCSD requests the County to stipulate to issuance of an alternative writ or to another procedural mechanism to resolve the litigation in an expeditious manner and the County agrees with any such strategy, MCSD shall not file an administrative or judicial challenge to such a strategy.

If the new legal challenge cannot be settled or resolved consistent with the settlement strategy agreed to herein, after such legal challenge is resolved, the County shall meet and confer with MCSD to determine what, if any, modifications to the Settlement

Strategy are necessary to satisfy the obligations of this Agreement due to resolution of the new legal challenge.

5. CONTINGENCIES

5.1 Scenario in Which Settlement Framework Dissolves

In the event that the County *either* (i) fails to get approval from HCD for its' Housing Element or any amendment thereto required under the Settlement Strategy, (ii) draws a timely lawsuit within 30 days of the posting by the Humboldt County Clerk of the NOD and the case cannot be expeditiously resolved to the satisfaction of MCSD as set forth in the paragraph immediately below; or (iii) the litigation referenced in Section 4.2 is settled or resolved in a manner that negates any of MCSD's benefits under this Settlement Agreement, then (i) MCSD may be absolved of any obligation to dismiss with prejudice their Action, (ii) and MCSD may file a motion with the Sonoma County Superior Court requesting an order that the stay of litigation jointly stipulated to per Section 2, above, be lifted, and (iii) all further obligations of the Parties' under this Agreement shall cease to exist. Furthermore, as described in Section 4.2, MCSD may also file a Third Amended Petition which incorporates causes of action challenging the County's approval of the Housing Element.

6. COSTS AND ATTORNEY'S FEES

The County and MCSD shall bear their own attorneys' fees and costs incurred in the Action.

7. NO ADMISSIONS

The Parties understand and agree that nothing in this Agreement, or in the execution of this Agreement, shall constitute or be construed as an admission by any Party of any inadequacy or impropriety in connection with the allegations contained in the Action. This Agreement is the result of a compromise and nothing contained herein shall be construed as an admission of liability, responsibility, or wrongdoing by any Party hereto. It is agreed that all statements contained herein and the conduct of any Party in connection with this Agreement shall be inadmissible as evidence under California

Evidence Code § 1152(a), except that the statements contained herein shall be admissible in any action to enforce or interpret this Agreement.

8. MODIFICATIONS; WAIVER

This Agreement may not be amended or modified by the Parties except in writing executed by all Parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the Party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. Nor shall any waiver constitute a continuing waiver.

9. AMBIGUITIES AND INTERPRETATION

This Agreement shall be deemed to have been drafted equally by the Parties, and shall not be interpreted for or against any Party by reason of the alleged authorship of any provisions. The Parties understand and agree that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement.

10. CONVENIENCE AND REFERENCE

The headings and numbers used in this Agreement are included for the purpose of convenience of reference only and they shall not be used to explain, limit, or extend the meaning of any part of the Agreement.

11. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable, in which case the Parties shall

work in good faith to amend this Agreement and/or take other action necessary to achieve the intent of this Agreement.

12. GOVERNING LAW

This Agreement shall be construed under and governed by the laws of the United States and the State of California.

13. AUTHORITY OF THE PARTIES TO ENTER INTO THIS AGREEMENT

Each person signing this Agreement on behalf of a Party hereby represents and warrants that he or she has complete authority to bind that Party to the terms and conditions of this Agreement.

14. NOTICES

All notices required under this Agreement shall be in writing, and may be given either personally or by registered or certified mail (return receipt requested) or facsimile. Any Party may at any time, by giving ten (10) days' written notice to the other Party, designate any other person or address in substitution of the address to which such notice shall be given. Such notice shall be given to the Parties at their addresses set forth below:

IF TO MCSD:

Tiffany K. Wright
Remy Moose Manley, LLP
455 Capitol Mall, Suite 210
Sacramento, CA 95814
(916) 443-2745
(916) 443-9017 (fax)

Russell S. Gans
Mitchell, Brisso, Delaney & Vrieze, LLP
P.O. Drawer 1008
814 Seventh Street
Eureka, CA 95502
Phone: (707) 443-5643
Fax: (707) 444-9586

Greg Orsini
McKinleyville Community Services District
1656 Sutter Road
P.O. Box 2037
McKinleyville, California 95519-2037
(707) 839-3251

IF TO COUNTY:

William (Bill) R. Bragg
Zwerdling, Bragg & Mainzer
804 Third Street
Eureka, CA 95501
Phone: (707) 445-9628
Fax: (707) 443-0442

Carolyn Ruth
County of Humboldt-County Counsel
825 5th Street
Eureka, CA 95501
Phone: (707) 445-7236
Fax: (707) 445-6297

15. EFFECTIVE DATE

This Agreement shall be effective ("Effective Date") as of the date of the signing by the last signatory to the Agreement.

16. COUNTERPART EXECUTION

This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

Approved as to form:

Dated: June 11, 2014



Tiffany K. Wright for
MCKINLEYVILLE COMMUNITY SERVICES DISTRICT

Dated: _____, 2014

William R. Bragg for
COUNTY OF HUMBOLDT

IF TO COUNTY:

William (Bill) R. Bragg
Zwerdling, Bragg & Mainzer
804 Third Street
Eureka, CA 95501
Phone: (707) 445-9628
Fax: (707) 443-0442

Carolyn Ruth
County of Humboldt-County Counsel
825 5th Street
Eureka, CA 95501
Phone: (707) 445-7236
Fax: (707) 445-6297

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Approved as to form:

Dated: _____, 2014

Tiffany K. Wright for
MCKINLEYVILLE COMMUNITY SERVICES DISTRICT

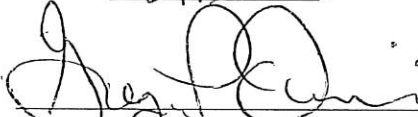
Dated: 6/10, 2014



William R. Bragg for
COUNTY OF HUMBOLDT


IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed
as of the date hereinafter written.

Dated: 6/13, 2014



Greg Orsini, General Manager
MCKINLEYVILLE COMMUNITY SERVICES DISTRICT

Dated: 6/10, 2014

By: 

Printed name: Rex H Bohm

Title: CHAIR
COUNTY OF HUMBOLDT

Exhibit A

APN	MF_UNITS	Sub_basin	
51005108		16	1
51007101		1	1
51009121		16	1
51009174		13	1
51010108		5	1
51010120		70	1
51010125		3	1
50817224		1	2
50818212		2	2
50818214		1	2
50819184		1	2
50830121		11	2
50823204		26	3
50825119		172	3
51013231		134	3
51014252		16	3
51021175		4	3
51021176		2	3
51021177		2	3
50806117		19	4
50806120		17	4
50807301		21	4
50909202		16	4
50909302		8	4
50909504		13	4
50910422		6	4
50911401		30	4
50911402		17	4
50913207		8	4
50915128		122	4
50915129		3	4
50921223		2	4
50921224		2	4
50922116		14	4