

Ongoing

SECOND SETTLEMENT AGREEMENT

The parties to this Second Settlement Agreement are Jefferson County and the Washington Environmental Council. This Agreement is entered into this 18th day of JANUARY, 2006.

WHEREAS, Jefferson County (“the County”) was among the local jurisdictions obligated under RCW 36.70A.130(4), a provision of the Washington Growth Management Act (“GMA”), “to take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter” by December 1, 2004; and

WHEREAS, the County reviewed development regulations in the County’s Unified Development Code (“UDC”) that protect “critical areas,” as defined by RCW 36.70A.030(5) but did not act legislatively to amend those regulations in the year 2004; and

WHEREAS, on February 15, 2005, the Washington Environmental Council (“WEC”) filed a Petition for Review (“PFR”) with the Western Washington Growth Management Hearings Board (“Hearings Board”) alleging that the UDC protections for designated critical areas fail to comply with the GMA and its implementing regulations; and

WHEREAS, WEC and the County previously reached a Settlement Agreement on March 26, 2002, (“Initial Agreement”) in WWGMHB Case No. 01-02-0013, which arose from a PFR filed in 2001 by WEC after initial adoption of the UDC on December 18, 2000, by Ordinance 11-1218-00; and

WHEREAS, the Initial Agreement addressed issues involving floodplains and channel migration zones, wetland mitigation ratios, wildlife habitat and agricultural exemptions; and

WHEREAS, on April 4, 2005, the County and WEC agreed to the dismissal of WWGMHB Case No. 01-2-0013, without prejudice to issues asserted by WEC in Case No. 05-2-0006; and

WHEREAS, the County satisfied most, but not all, of the terms of the Initial Agreement; and

WHEREAS, in the 2005 PFR, WEC asserted those issues not addressed to its satisfaction by the County under the Initial Agreement; and

WHEREAS, the parties wish to afford the County the opportunity to make changes and improvements to the UDC and avoid the unnecessary expenditure of public and private resources required to litigate the 2005 WEC PFR; and

WHEREAS, representatives of the County and WEC have worked cooperatively to formulate the following agreement which addresses the issues raised by the 2005 WEC PFR; and

WHEREAS, the parties agree that this Second Settlement Agreement shall incorporate certain terms of the Initial Agreement and shall replace the Initial Agreement, which shall no longer be in force and effect;

Now, therefore, the parties hereby agree as follows:

1. Floodplains and Channel Migration Zones.

1.1 In connection with the initial Settlement Agreement, Jefferson County and partners identified flood hazard areas and channel migration zones of the major eastern Jefferson County rivers—the Duckabush, Dosewallips, Big Quilcene, and Little Quilcene. In order to protect public safety, fish and wildlife habitat and associated riparian habitat functions, the County shall enact development regulations that preserve the integrity of identified channel migration zones and establish buffers to be measured from the outer edge of those channel migration zones. The regulations will provide the opportunity for site-specific buffer review for development proposed within channel migration zone buffers. This review will be based on circumstances, such as topography, that are specific to the proposed development site. Approval of development sites within channel migration zone buffers may require implementation of a Habitat Management Plan (“HMP”) to ensure protection of riparian habitat functions. The County will adopt these regulations within six (6) months of the date of this Second Settlement Agreement.

1.2 In the event that the delineation of channel migration zones has unintended consequences harmful to other GMA goals, the County may seek alternatives that are supported by best available science and are consistent with GMA.

2. Wetlands.

2.1 The County will amend the UDC with respect to regulatory protections for wetlands within six (6) months of the date of this Second Settlement Agreement. The County shall adopt the Washington Department of Ecology (“Ecology”) 2004 Wetland Rating System and wetland management provisions that are consistent with Ecology’s *Wetlands in*

Washington State. Vol II: Guidance for Protecting and Managing Wetlands (2005). For purposes of this section, “consistent” means a wetland protection program that is based on one or more of the alternatives described in *Volume II*. Any departures from the *Volume II* alternatives to account for local circumstances shall be developed through consultation with Ecology wetland specialists.

3. Wildlife.

3.1 Building upon the County’s recent identification of core habitat areas and corridors in eastern Jefferson County (Tomassi 2004), the County will develop strategies for protecting wildlife habitat as part of a landscape approach for habitat conservation management. These strategies shall include both regulatory and non-regulatory approaches.

3.2 Within six (6) months of the date of this Second Settlement Agreement, the County shall adopt UDC provisions that establish enhanced regulatory protection for mapped core habitat areas and corridors for use when the County considers development permit applications involving proposed forest practice conversions (i.e., Class IV General FPAs) and land divisions.

4. Agricultural Exemptions.

4.1 The County will commit staff and resources to collaborate with other stakeholders to develop an agricultural management plan or group of watershed-level plans (“management plan(s)”) for protection and enhancement of fish and wildlife habitat on lands that sustain existing and ongoing agriculture. The first priority for planning will be the

Chimacum Creek watershed. The management plans will describe sets of best management practices (BMPs) that will provide the basis for a voluntary program in which habitat protection is addressed on lands that sustain existing and ongoing agriculture, as defined in the UDC through Ordinance No. 05-0428-03 in correspondence with terms of the Initial Agreement. The management plans will include goals, specific objectives, timelines, benchmarks and monitoring to ensure that the voluntary program will protect critical areas and “give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries” [RCW 36.70A.172.(1)]. The voluntary program requires that the following necessary steps are completed through legislative adoption by the Board of County Commissioners (“BoCC”):

4.1.1 Adoption of the completed management plans.

4.1.2 Adoption of a funding strategy to implement the management plans.

4.1.3 Adoption of a timetable for implementing the management plans.

4.1.4 Adoption of a monitoring and evaluation plan.

4.2 The County will adopt the Chimacum Creek management plan within six (6) months of the date when this Second Settlement Agreement is executed. By no later than December 31, 2006 the County will complete items 4.1.2 through 4.1.4 for the Chimacum Creek management plan and items 4.1.1 through 4.1.4 (inclusive) for the management plan(s) addressing the remaining watersheds in the county.

4.3 In conjunction with 4.1.4 above, the County will adopt criteria that will be used to measure the success of individual management plans. The County will work with

WEC to ensure that appropriate criteria are adopted. Monitoring results will be used to evaluate whether non-regulatory actions are protecting existing functions and values of fish and wildlife habitat in and adjacent to streams on lands that sustain existing and ongoing agriculture.

4.4 Exemption from standard stream and wetlands buffers for existing and ongoing agriculture will be revisited during periodic review of the Comprehensive Plan and development regulations, pursuant to RCW 36.70A.130. However, if at any time the County finds through evaluation of best available science that the voluntary implementation of agricultural BMPs is failing to protect wetlands and fish and wildlife habitat areas from impacts related to agriculture in any given watershed or specific areas within a given watershed, this exemption will be promptly modified or eliminated for that watershed or particular sites within that watershed, in order to meet the criteria adopted through fulfillment of 4.3 above.

5. Case Dismissal and Appeal Remedy.

5.1 Pending the County's satisfaction of the terms of this Agreement, the parties will mutually move for and stipulate to any necessary orders to stay proceedings in this case. The County shall inform WEC of the status of implementation twelve (12) months after the execution of this agreement. WEC agrees to dismiss the 2005 PFR when the County fully satisfies the terms of this Agreement. The County will be considered to have fully satisfied the terms of this Second Settlement Agreement when it has completed the following:

- 5.1.1 Designation of channel migration zones and adoption of regulatory protections pursuant to Section 1 of this Agreement.
- 5.1.2 Adoption of revised regulatory protections for wetlands pursuant to Section 2 of this Agreement.
- 5.1.3 Adoption of regulatory protections for areas mapped as core wildlife habitat and corridors pursuant to Section 3 of this Agreement.
- 5.1.4 Adoption by BoCC resolution of the elements listed in Sections 4.1.1, 4.1.2, 4.1.3 and 4.1.4 relating to establishment of a protection program for streams and wetlands from potential impacts associated with existing and ongoing agriculture.

5.2 The parties will work in good faith during the implementation of this Agreement to consider mutually agreeable positions on matters that may arise in the implementation and amendment process. Regarding agricultural exemptions, WEC reserves the right to seek additional regulatory requirements by appropriate means, if it concludes that the voluntary compliance program is failing to meet its objective to protect wetlands and fish and wildlife habitat areas from impacts related to agriculture.

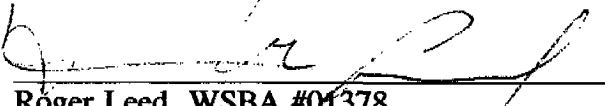
6. Replacement.

6.1 The Initial Agreement between WEC and the County dated March 26, 2002 is hereby extinguished and replaced by this Second Settlement Agreement.


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The Jefferson County Board of County Commissioners, acting in its role as the County legislature of Jefferson County, has reviewed and approved the terms of this Settlement Agreement and authorizes the execution of this document by its appointed counsel, Mark R. Johnsen.

DATED this 18 day of JANUARY, 2006.



Roger Leed, WSBA #01378
On behalf of Petitioner,
Washington Environmental Council



Mark R. Johnsen, WSBA #11080
On behalf of Respondent,
Jefferson County