

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made between Plum Creek Land Company, a Delaware corporation ("Plum Creek"), the State of Washington, by and through its Department of Natural Resources ("DNR" as that term is defined below), and Lewis County, a Washington municipal corporation ("County"). Plum Creek, DNR and the County are each referred to as a "Party," and collectively as the "Parties." Unless otherwise indicated, capitalized terms have the meanings ascribed to them in Paragraph 1 of this Agreement.

### RECITALS

- A. The State of Washington is the former owner of the real property described under Lewis County Tax Parcel No. 035145008014 ("the Parcel"). The subject site is a parcel located in Section 16, Township 13 North, Range 9 East (property center located at approximately latitude north 46.62083, longitude west 121.68613) northwest of the intersection of Skate Creek Road South and Craig Road. The unincorporated town of Packwood is about 2 miles to the southeast. The Gifford Pinchot National Forest is approximately 1 mile to the north and west of the site. The general land use in the area is for rural recreation cabins and small farms.
- B. In 2009, DNR conveyed the Parcel to Plum Creek as part of a large land exchange transaction, the North Fork Green River Trust Land Exchange. As part of that transaction, DNR exchanged approximately 6,000 acres of land in southwest Washington for approximately 20,600 acres located within the City of Tacoma's Green River watershed in eastern King County. The Parcel was traded because it was part of smaller, isolated parcels owned and managed by DNR close to the urban interface.
- C. The Quitclaim Deed reflecting the conveyance of land, including the Parcel, from DNR to Plum Creek was recorded September 28, 2009 at Document No. 3334310 of the land records of the Lewis County Auditor.
- D. According to historical records maintained by DNR and the County, Lewis County leased a portion of the Parcel from DNR beginning in 1959 and continuing through 1975. The earliest records indicate the site was used as a gravel quarry, but subsequent documents reflect the use of the property as a

dump for household wastes from Packwood and surrounding areas from approximately the mid-1960s to 1975. During this term of use, the County reportedly brought a small bulldozer to the site, pushing the accumulated garbage into long piles for burning. Anecdotally, the local garbage truck service also used the site to dispose of collected garbage until it went out of business in 1975. That year, the County closed and covered the dump and DNR terminated the County's lease. There are no extent structures, buildings, fences or other above-ground features from these past land uses.

- E. The Parcel is Lot 14 established by a Record of Survey recorded under Auditor's File No. 3407033 in the records of the Lewis County Auditor and is among a group of open lots for sale by Plum Creek. The size of the Parcel is approximately 21.4 acres. The portion of the Parcel that encompasses the site that was used as a municipal dump is approximately 5 acres in size and is located in the approximate easterly  $\frac{1}{4}$  of the Parcel, bordering on and accessible to both Craig Road on the south and Skate Creek Road on the east. This dump-related portion of the Parcel is referred to hereinafter as "the Site." The Site is moderately flat, undeveloped forest and brush land located along the Skate Creek watershed. It currently is vegetated with Scotch Broom, cottonwood, Douglas fir and grasses common to the area.
- F. The area sits on a glacial moraine bench, characterized by a very thin surface top soil layer underlain by gravels, cobbles and sand. The land in the vicinity of the Site slopes generally from the northwest to the southeast and groundwater likely flows in a similar direction. There are no perched water sources, lakes or open-channel streams or storm-water drainages on or bordering the Site. Precipitation in the form of rain or snow likely percolates through the porous soils, rather than generating storm-water runoff during typical storm events, as there is little visual evidence of surface scour in roadside ditches near the Site.
- G. In 2015, Plum Creek retained Fisher & Associates to perform a Combined Phase I and II Environmental Site Assessment conforming to ASTM Standard Method E-2247-08 (Phase I) and ASTM Method E-1903-97 (Phase II) of the Site. The assessment included identification of the parameters of the old dump site and whether any significant contamination or Recognized Environmental Conditions (RECs) are still present.
- H. According to Fisher & Associates, it excavated nine (9) test pits to determine the extent of the actual garbage deposit on the Site. The pit locations were laid out in a general grid pattern to include the areas in and around the former dump site. The pits were excavated to a depth below ground level of from 10 to 12 feet each. Five (5) of the nine (9) test pits reportedly located waste

material, while the four (4) remaining pits consisted only of clean background or native soil/gravel matrices with no evidence of any waste materials present. Where waste material was located, the old deposit waste layer reportedly ranged from 3 feet to more than 12 feet. In general the thickness of the waste deposit appeared to increase from the west margin of the dump area to the east. Based on the assessment, Fisher & Associates determined that the actual garbage deposit is situated approximately in the center of the Site and occupies an area of approximately 0.75 acres.

- I. Fisher & Associates reportedly excavated the material from the five (5) test pits with waste content and analyzed the waste content, finding that all or most of the waste items identified appeared to be of typical household garbage origin, including bottles, broken glass, metal remnants, paper, plastic, cable pieces, bed springs, and miscellaneous trash. Except for the cable pieces, no other industrial-related waste items were encountered.
- J. No groundwater was detected in any of the nine (9) test pits throughout the Site. Nor was there any visual evidence of moisture in any of the soil or waste layers encountered in the pits, suggesting the Site is well drained and that any groundwater is much deeper than the depth of the pits (i.e., > 12'+).
- K. There are no known ESA-listed species on the Site.
- L. Soil and/or waste samples were taken from the nine (9) test pits in and around the Site. All samples reportedly were collected and transferred under chain of custody the same day to ALS Laboratory in Kelso, WA, for various hazardous materials analyses.
- M. According to Fisher & Associates, samples from three (3) of the nine (9) test pits disclosed levels of Cadmium in excess of the MTCA Method A Soil Cleanup Level for Unrestricted Land Use of 2.0 ppm. The readings reported were of 3.9, 3.9 and 5.4 ppm.
- N. Samples from four (4) of the nine (9) test pits disclosed levels of Lead in excess of the MTCA Method A Soil Cleanup Level for Unrestricted Land Use of 250 ppm. The readings reported were of 270, 365, 469 and 846 ppm.
- O. A sample taken from one test pit reportedly disclosed a level of Mercury in excess of the MTCA Method A Soil Cleanup Level for Unrestricted Land Use of 2.0 ppm. The reading reported was of 16.5 ppm.
- P. None of the samples disclosed readings in excess of the MTCA Method A Soil Cleanup Level for Unrestricted Land Use for any of the following

analytes: Arsenic, Barium, Chromium, Selenium, Silver, TPH-DRO, TPH-RRO, PCBs, VOCs, and Semi-Vols.

- Q. The results reported indicate elevated levels of some heavy metal residuals remain on the Site.
- R. Plum Creek notified DNR and the County of the readings on the Parcel in 2015.
- S. Plum Creek subsequently notified the Department of Ecology of the findings at the Site.
- T. DNR, Plum Creek and the County desire to resolve this matter without litigation.

**In consideration of the promises contained in this Agreement, the Parties agree to the following:**

**1. Definitions.**

- a. **“DNR”** means the State of Washington as well as the Washington Department of Natural Resources (including DNR’s predecessors and any successor departments or agencies) and the Commissioner of Public Lands.
- b. **“Hazardous Substances”** means substances so designated under the Model Toxics Control Act,” RCW 70.105D.020(13), or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601(14).
- c. **“Parcel”** means the approximately 21.4 acre parcel of real property described under Lewis County Tax Parcel No. 035145008014.
- d. **“Site”** means that portion of the Parcel that encompasses the site that was used as a municipal dump in portions of the 1960s and 1970s. The actual waste deposit covers approximately 0.75 acres. However, the Site includes the surrounding area encompassing the road used to access the dump, as well as access from Craig Road on the south and Skate Creek Road on the east. The Site is approximately 5 acres in size and is located in the approximate easterly ¼ of the Parcel.

- 2. Subdivision of Parcel and Conveyance of Site as Conservation Lot.** Upon execution of this Agreement, Plum Creek agrees to subdivide the Parcel described as Lot 14 in the Record of Survey recorded under AFN 3407033 of the records of the Lewis County Auditor and create a Conservation Lot in conformance with Lewis County Code section 16.02.040(11) consisting of the Site. Once the Conservation Lot is created and approved by the County, Plum Creek agrees to convey the Site to DNR by quitclaim deed, with DNR to pay any and all closing costs. Plum Creek's conveyance of the Site to DNR is contingent upon DNR meeting the requirements of RCW 79.10.020.
- 3. Conveyance of Site to County.** Subsequent to the conveyance of the Site to DNR, DNR shall convey the Site to the County, with the County to bear any and all closing costs. Under the requirements of RCW 79.17.200, DNR's conveyance of the Site to the County is contingent upon approval by the Board of Natural Resources.
- 4. Screening and Maintenance as Conservation Lot.** After the Site is conveyed to the County, the County shall fence and/or landscape the Site to provide screening of the Site from the residences to the north and west of the Site and from Craig and Skate Creek Roads. The County shall ensure that the Site is maintained as a Conservation Lot.
- 5. Remediation.** The Parties agree that the Site shall be maintained as a Conservation Lot. Should the Department of Ecology require remediation of the Site as it is currently defined in this agreement or as it may be defined by Ecology in the future, DNR and the County agree to cooperate in developing and implementing any necessary remedial actions on the Site. DNR and the County may mutually agree to participate in the Voluntary Cleanup Program, or take other remedial actions necessary, in consultation with the Department of Ecology, to remediate contamination from the affected portion of the Site and to share equally in the cost of such mutually agreed upon or regulated actions as those costs are incurred. DNR's and the County's remediation obligations under this Agreement are each contingent upon the respective legislative appropriation of funds.
- 6. Consideration and Release**

  - a. In settlement of Plum Creek's claims against DNR and the County for recovery of costs incurred discovering the existence of hazardous substances on the Site, for the cost of assessing the contamination of the Site, for professional and other costs incurred subdividing the Parcel to create a Conservation lot under Lewis County Code, for lost profits suffered or other losses or costs incurred by foregoing the development

and/or sale of additional lots out of the Parcel, DNR agrees to the re-conveyance of the Site to DNR by Plum Creek and the County agrees to the subsequent conveyance of the Site to the County from DNR and to fence and screen the Site and to maintain the same as a Conservation Lot. Further, by way of additional consideration, DNR and the County agree to bear the cost of the remediation of the Site as it is currently defined in this agreement or as it may be defined by Ecology in the future, with each bearing fifty percent (50%) of each dollar of cost as it is incurred.

- b. In exchange for DNR's and the County's commitments and the conveyances of the Site under Paragraph 6(a), Plum Creek agrees to release any and all claims it has against DNR and any and all claims it has against the County arising out of, or in any way relating to, the release or threatened release of Hazardous Substances at the Site.
- c. In exchange for the County's agreement to accept conveyance of the Site from DNR, to bear any and all closing costs associated with that transaction, to fence and screen the Site and maintain it as a Conservation Lot, and its agreement to bear and actual payment of fifty percent (50%) of the costs of remediation of the Site, DNR agrees to release any and all claims it has against the County arising out of, or in any way relating to, the release or threatened release of Hazardous Substances at the Site.
- d. In exchange for DNR's agreement to take the Site back from Plum Creek, to bear any and all closing costs associated with that transaction, and its agreement to bear and actual payment of fifty percent (50%) of the costs of remediation of the Site, the County agrees to release any and all claims it has against DNR arising out of, or in any way relating to, the release or threatened release of Hazardous Substances at the Site.
- e. Nothing in this Agreement shall waive, release, or otherwise affect in any way any right, claim, defense, interest or cause of action that the Parties may have with respect to any entity that is not a party to this Agreement.

**7. Indemnity.** To the extent permitted by law and provided that Plum Creek complies with its promises under this Agreement, DNR and the County will jointly indemnify and hold Plum Creek and its respective employees, officers and directors, harmless against any and all claims by persons or entities who are not Parties to this Agreement arising out of or in any way related to the release or threatened release of Hazardous Substances at the Site. DNR's and the County's obligations under this Paragraph 7 shall only apply to the extent that

Plum Creek and its respective employees, officers, and directors, have not caused or contributed to a release or threatened release of hazardous substances on the Site.

- 8. No Admission of Liability.** This Agreement is entered into without any admission of liability, and nothing in this Agreement shall constitute or be interpreted, construed, or used as evidence of any admission of liability under any theory of law.
- 9. Communications Made for the Purpose of Settlement.** The Parties agree that any statements or representations made by them in the context of (a) settlement negotiations with each other or (b) this Agreement are and have been made for the purposes of settlement within the meaning of Evidence Rule 408 and cannot be used by or against the Parties in litigation as evidence of liability, waiver, or concession.
- 10. No Third Party Benefits.** The Parties execute this Agreement for their sole and exclusive benefit. The Parties expressly do not intend to benefit any other party and expressly do not intend to create any third-party beneficiaries to this Agreement.
- 11. Governing Law.** This Agreement and the obligations of the Parties shall be governed by, and interpreted in accordance with, the laws of the State of Washington.
- 12. Successors and Assigns.** This Agreement shall be binding upon all successors and assigns of the Parties.
- 13. Entire Agreement.** This Agreement contains the entire understanding among the Parties relating to the claims asserted by Plum Creek. It supersedes any prior negotiations or representations, whether written or oral, relating to Plum Creek's claims. Each Party acknowledges that it enters into this Agreement in reliance solely on its terms without reliance on any other promises, representations, or warranties.
- 14. Authority of Signing Parties.** Each person signing this Agreement represents and warrants that he or she is duly authorized to enter into this Agreement by the entity on whose behalf the person is signing.
- 15. Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**16. Further Assurances.** Each Party shall take all actions and deliver all documents as may be reasonably necessary and/or appropriate to confirm, carry out, and effectuate fully the intent and purposes of this Agreement and to enable each Party to enjoy the benefits contemplated by this Agreement.

**17. Severability.** The terms and provisions of and the obligations created by this Agreement are severable. If any part of this Agreement is determined to be invalid or comes to be unenforceable, the remaining parts shall not be affected thereby, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the said part.

**18. Survival.** The obligations arising under this Agreement shall survive and not merge into the deed to be delivered by Plum Creek pursuant to Section 2 herein.

**19. Notices.** Notices under this Agreement shall be given as follows:

If to Plum Creek:

P.O. Box 9777, Mailstop CH 1J25  
Federal Way, WA 98063-9777  
ATTN: David J. Sprinkle  
[david.sprinkle@weyerhaeuser.com](mailto:david.sprinkle@weyerhaeuser.com)

If to DNR:

1111 Washington Street SE  
Olympia, WA 98504  
ATTN: Brock Milliern  
[Brock.Milliern@dnr.wa.gov](mailto:Brock.Milliern@dnr.wa.gov)

With a copy to:

Cairncross & Hemplemann, P.S.  
524 Second Avenue, Suite 500  
Seattle, WA 98104  
ATTN: Andy Lane  
[alane@cairncross.com](mailto:alane@cairncross.com)

With a copy to:

Washington State Attorney General's Office  
1125 Washington Street SE  
Olympia, WA 98504-0100  
ATTN: Ted Callow, AAG  
[tedc@atg.wa.gov](mailto:tedc@atg.wa.gov)

If to Lewis County:

Lewis County Prosecuting Attorney's Office

345 West Main Street, 2<sup>nd</sup> Floor

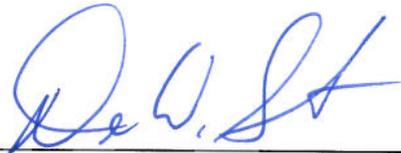
Chehalis, WA 98532

ATTN: Glenn Carter

[Glenn.carter@lewiscountywa.gov](mailto:Glenn.carter@lewiscountywa.gov)

In witness whereof, the parties have caused this Agreement to be executed as evidenced by the signatures of their duly authorized representatives, below. This agreement shall be effective as of the date of the last signature below.

**PLUM CREEK LAND COMPANY**



Date: 9/19/16

By: Devin Stockfish

Its: Sr. VP + General Counsel

Approved: DJS

**LEWIS COUNTY**

**STATE OF WASHINGTON, by and  
through its DEPARTMENT OF  
NATURAL RESOURCES**

Date:

By:

Its:

Date:

By:

Its: