

## Settlement Agreement

This SETTLEMENT AGREEMENT (Agreement) is made between and among Petitioners Washington Farm Bureau, Whatcom County Farm Bureau, Whatcom County Cattlemen’s Association, and Whatcom Family Farmers (collectively, “Petitioners”) and Respondent Whatcom County, a Washington municipal corporation (the County) (collectively, “Parties”), this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

### I. RECITALS

1. The parties to the Agreement are involved in a Petition for Review (the Petition) initiated by Petitioners against the County that is pending before the Western Washington Growth Management Hearings Board (WWGMHB) in Case No. 18-2-0001, and is an appeal of the County’s Ordinance No. 2017-077 (the Ordinance), Amending Whatcom County Code Chapter 16.16 (Critical Areas) and Whatcom County Code Chapter 23.10 (Shoreline Management Program—Purpose and Intent) Pertaining to the Protection and Regulation of Environmentally Critical Areas.
2. The stated purpose of the Ordinance was to ensure that the County’s Critical Areas Ordinance (CAO) meets Growth Management Act (GMA) requirements, including consistency with the Whatcom County Comprehensive Plan (Comp Plan), Best Available Science (BAS) and state agency guidance updates. The Ordinance was published on December 9, 2017.
3. Petitioners timely filed their Petition, appealing the Ordinance, on February 7, 2018. The Petition included a detailed statement of issues, alleging, among other things, violations of the GMA, the County Comprehensive Plan, and the Countywide Planning Policies. One of the main issues alleged in the Petition relates to the CAO definition of “ongoing agriculture.” The Petition requested that the WWGMHB issue a finding of noncompliance with the GMA and a determination that the challenged CAO provisions are invalid.
4. The GMA allows a county legislative authority to protect critical areas through the voluntary stewardship program (VSP) as an alternative to protecting critical areas in areas used for agricultural activities through development regulations adopted under RCW 36.70A.060. Pursuant to RCW 36.70A.710(1)(b), in order to be eligible to participate in the VSP, a county legislative authority was required to elect to participate within six months after July 22, 2011. Whatcom County did not elect to participate prior to this deadline and, therefore, it is not currently eligible to join the VSP.
5. In January 2020, Washington State Senate Bill (SB) 6545 was introduced. The original bill was subsequently replaced with Substitute Senate Bill (SSB) 6545. This bill proposed resetting the deadline for a county to join the Voluntary Stewardship Program (VSP) to July 1, 2021; however, SSB 6545 did not pass. It is possible that a similar bill may be introduced in the future. The Parties recognize that the County’s participation in the VSP could resolve the Petitioner’s purported issues related to the definition of “ongoing agriculture.”
6. The Parties have met several times and have engaged in ongoing discussions about how to resolve the pending issues set forth in the Petition.

7. The Parties wish to resolve all claims related to the Petition, based on certain terms, as outlined below, subject to necessary approvals by the Whatcom County Council.
8. Resolution of issues related to the Petition will include the County Council's passage of one or more resolutions and/or ordinances and the Petitioners' dismissal of the pending Petition before the WWGMHB.

THEREFORE, in consideration for and as a condition of the following covenants, the Parties agree, as follows:

## **II. AGREEMENTS**

1. The County agrees to consider the adoption of an ordinance amending the text of its CAO, as presented in the attached Exhibit A. The County will make every effort to consider this ordinance as soon as is reasonably feasible.
2. The County further agrees to consider the adoption of a resolution indicating the County Council's support for any future legislative action resetting the deadline for participation in the VSP and support for considering the adoption of an ordinance consistent with RCW 36.70A.710(b)(i-iii) in the event such legislative action is passed.
3. Because he believes it to be in the best interest of Whatcom County, the Whatcom County Executive agrees to authorize Whatcom County's contracted lobbyists to track and support the passage of a VSP funding bill if introduced during the 2022 legislative session.
4. Upon adoption of a bill by the legislature resetting the date to join the VSP, following all procedural requirements under state and local law, the County agrees to consider the adoption of an ordinance consistent with RCW 36.70A.710(b)(i-iii). If the date is reset, the Petitioners will timely notify the County of their desire for the County to consider the adoption of such an ordinance.
5. This Agreement is contingent upon final adoption by the County Council of an ordinance amending WCC 16.16, as set forth in Exhibit A. This Agreement is also contingent upon the adoption of a resolution indicating the County Council's support for any future legislative action resetting the deadline for participation in the VSP and its support for considering the subsequent adoption of an ordinance consistent with RCW 36.70A.710(b)(i-iii).
6. Upon the adoption of the ordinance and resolution described above in paragraphs 1 and 2, respectively, Petitioners agree to dismiss with prejudice the pending appeal in WWGMHB Case No. 18-2-00011 within ten calendar days.
7. If further requests to the WWGMHB for extension of the hearing date on the Petition are necessary while the Parties execute the terms of this Agreement, the Parties agree to join in such requests for extension.
8. Upon the adoption of the ordinance and resolution described in paragraphs 1 and 2, respectively, and the dismissal of the petition as provided for in paragraph 6, the Parties agree to mutually release the other party from any and all claims that were or could have been brought in relation to the issues set forth in the WWGMHB Case No. 18-2-0001.



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Karen Frakes, WSBA # 13600  
Whatcom County Chief Civil Deputy Prosecutor  
Attorney for Respondent

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WHATCOM COUNTY FARM BUREAU

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WASHINGTON FARM BUREAU

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WHATCOM COUNTY CATTLEMEN'S  
ASSOCIATION

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WHATCOM FAMILY FARMERS

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Dannon Traxler, WSBA # 37158  
Langabeer & Traxler, P.S.  
Attorney for Petitioner

## EXHIBIT A TO SETTLEMENT AGREEMENT

### Revisions to farm plan requirements in WCC 16.16 (Critical Areas), Chapter 8, (CPAL).

1. Language will be included in the next to last sentence of WCC 16.16.800 (Purpose) to read: “If farmers and ranchers enter into the CPAL program and demonstrate no impacts to critical areas through the assessment, then flexibility in these provisions shall be extended to them.”
2. “Exemption” language will be added to WCC 16.16.840 (Conservation Farm Plan Requirements), to read: “Any agricultural activity that an assessment by the Conservation District or a Conservation District-approved third party determines has no adverse impacts to critical areas, based on number/type of animals, type of soils, productivity of the pasture, among other factors, or already-implemented best management practices, shall not be required to have a farm plan and shall be deemed to be in compliance with the provisions of CPAL and this Chapter.”
3. WCC 16.16.620.E.1 will be revised to remove the words “appurtenant” and “primary” so that it reads: “Construction of an accessory structure that is associated with an agricultural use.”
4. The disclosure requirement found in WCC 16.16.870.C (“The County will provide to the public via its website information regarding which farms have approved conservation farm plans and the date of their approval.”) will be removed.
5. The word “ongoing” will be removed from WCC 16.16.235.B.9.a (these are activities allowed in critical areas/buffers without notification.) This section, will read:
  - “9. Routine maintenance of ditches on agricultural lands; provided, that all of the following are met:
    - a. The maintenance is necessary to support agricultural operations...”