

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement"), for reference purposes only, is dated the 13th day of June, 2022, and is entered into by and between Baker Ave., L.L.C., a Washington limited liability company ("Baker"); and Thurston County, a Washington municipal corporation ("County") (individually a "Party," collectively the "Parties").

I. RECITALS

WHEREAS, Baker is the owner of the real property located in Thurston County, Washington commonly known as Tax Parcel No. 09090-00-9000 (the "Property");

WHEREAS, on or about December 29, 2021, Baker filed an appeal of Thurston County's Critical Area Determination ("CAD") issued on December 17, 2021, under Project No. 2021105815 – Appeal No. 21-116248 VE (the "Appeal"), challenging the County's rejection of a Mazama pocket gopher report ("MPG Report") for the Property; and

WHEREAS, the Property is immediately adjacent to an approved preliminary plat known as "Sienna II," which is under active construction; and

WHEREAS, the Property previously received approval, which expired, for a preliminary plat known as "Sienna I," which shares infrastructure with Sienna II; and

WHEREAS, the County issued permits for development for Sienna II, including construction of infrastructure and installation of utilities on portions of the Property, which resulted in disturbance of soils within the area subject to Mazama pocket gopher review; and

WHEREAS, the disturbance associated with construction activity for Sienna II caused the site conditions documented in the MPG Report, which ultimately resulted in the Appeal; and

WHEREAS, the Property contains soils suitable for Mazama pocket gopher, three subspecies of which are listed as threatened under the Federal Endangered Species Act ("ESA"); and

WHEREAS, the County anticipates that the United States Fish & Wildlife Service will approve the County's Habitat Conservation Plan ("HCP") and Incidental Take Permit for the Mazama pocket gopher under the ESA within the next year; and

WHEREAS, upon approval, the County is expected to comply with the terms and conditions of the HCP through adoption of an implementing ordinance containing procedures for review and permitting of development projects with impacts to Mazama pocket gopher habitat; and

WHEREAS, the Parties now wish to resolve the issues in dispute and provide certainty for permitting and review of future development of the Property.

THURSTON COUNTY
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BUILDING DEVELOPMENT CENTER

II. AGREEMENT

In consideration of the promises and obligations set forth below, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation. The Parties hereby incorporate by reference the above Recitals, as though fully set forth herein.

2. Mazama Pocket Gopher Review and Future Development Conditions

a. Within 30 (thirty) days of the Effective Date of this Agreement, Baker will prepare and submit an updated Mazama pocket gopher screening report for the Property, which documents that the disturbed areas on Sienna I identified in the original MPG Report were within the approved construction permit limits for the Sienna II infrastructure and utility improvements.

b. The County will accept Baker's updated screening report.

c. For purposes of settlement and regardless of the findings of the screening report, the Parties stipulate for purposes of the HCP that impacts to Mazama pocket gopher habitat cannot be avoided with alternative development of the Property.

d. Baker agrees that the future preliminary plat on the Property will be subject to the requirements of the County's HCP and implementing ordinance for mitigation of impacts to Mazama pocket gopher habitat. The County agrees to recommend a condition of approval for the plat requiring the same, even if the HCP is not in effect at the time the preliminary plat hearing for the project occurs.

e. In the unlikely event that the HCP is not in effect at the time construction permits need to be issued for site improvements to the Property following preliminary plat approval, the County will accept a bond for the estimated mitigation fees for impacts to Mazama gopher habitat under the HCP and implementing ordinance and allow development of the Property to proceed. The County will release the bond after the HCP is effective and the final mitigation fee paid. If the HCP and implementing ordinance are not in effect within five (5) years after construction permits are issued, it shall be released without Baker being liable for any additional mitigation for impacts to Mazama pocket gopher.

3. Mutual Release. In consideration of the mutual promises and covenants contained in this Agreement, each Party hereby releases and forever discharges the other and their agents, attorneys, insurers, heirs, estates, personal representatives, successors, and assigns, from any and all causes of action, claims, demands, liabilities, and obligations of any kind relating to this dispute, whether existing now or in the future.

4. Entire Agreement and Successors in Interest. This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each. No promises of any kind have been made in connection with this settlement, other than as stated in this Agreement.

5. **Attorneys' Fees and Costs.** Each Party shall each bear its own attorneys' fees and costs related to the dispute. In any legal action arising out of this Agreement, including an action to enforce this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs.

6. **No Admission.** It is understood and agreed by the Parties that this Agreement is a compromise of a dispute, and nothing set forth herein shall be construed as an admission of liability on the part of either Party.

7. **Construction, Interpretation.** The Parties agree that each Party has participated fully in the drafting of this Agreement and that any rules of construction and interpretation that would otherwise require a court to construe or interpret any provisions herein against the drafting Party shall not apply.

8. **Counterparts.** This Agreement may be executed in counterparts, each executed counterpart shall be deemed an original, and all counterparts together shall constitute one and the same Agreement.

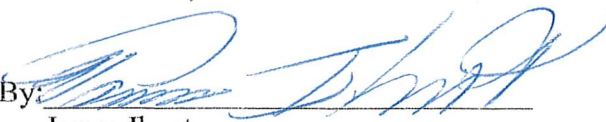
9. **Severability.** If any terms or conditions of this Agreement are held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision included in this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained in this Agreement.

10. **Waiver.** No delay in exercising any right or remedy provided for under this Agreement shall constitute a waiver thereof, and no waiver of the breach of any provision of this Agreement shall be construed as a waiver of preceding or succeeding breach of the same.

11. **Effective Date.** This Agreement shall be effective as of the date of last signature below.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

BAKER AVE., L.L.C.

By: 

James Ihnot
Its: Governor

THURSTON COUNTY

By: _____

Its: _____

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BAKER AVE., L.L.C.

By: _____

James Ihnot

Its: Governor

THURSTON COUNTY

By:  _____

Its: CP&D Director

APPROVED AS TO FORM:

By: 

Travis H. Burns

Thurston County Senior Deputy Prosecuting Attorney