

# Settlement Agreement

**Note: This is the settlement agreement from Washington Environmental Council et al v. Sutherland et al. (King County Superior Court No. 04-2-26461-8SEA, dismissed April 7, 2006).**

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## SETTLEMENT AGREEMENT

This Agreement is entered into between the Washington Environmental Council, Conservation Northwest, the National Audubon Society, and the Olympic Forest Coalition (collectively the "Plaintiffs"), Douglas Sutherland, Commissioner of Public Lands, the Board of Natural Resources (BNR) and the Department of Natural Resources (DNR) (collectively the "Defendants") and American Forest Resource Council, Pacific County, Skamania County, City of Forks, Quillayute Valley School District No. 402, Toutle Lake School District No. 130, Willapa Valley School District No. 160, Pacific County Hospital District No. 2 d.b.a. Willapa Harbor Hospital, Snohomish County, Skagit County and Castle Rock School District No. 401 (collectively the "Intervenors").

### RECITALS

- A. The Board of Natural Resources adopted Resolution 1134 on September 7, 2004, following a public decision-making process that spanned over four years. Resolution 1134 adopted 597 million board feet as the average annual sustainable harvest level from DNR-managed trust lands in Western Washington for the decade of fiscal year 2005 through fiscal year 2014, as well as amending and adopting certain policies, procedures and tasks for purposes of implementing the sustainable harvest and managing Western Washington state trust forest lands. All of the parties to this Agreement also participated in the Board's public decision-making process that led up to Resolution 1134.
- B. On October 4, 2004 Plaintiffs brought suit in King County Superior Court, entitled *Washington Environmental Council, et al v. Sutherland, et al* (King County Superior Court No. 04-2-26461-8SEA)(hereafter "*WEC v. Sutherland*") seeking a declaration that Resolution 1134 was invalid on the grounds that it was adopted without proper compliance with the State Environmental Policy Act ("SEPA"), RCW Ch. 43.21C, and seeking injunctive relief precluding DNR from conducting forest management practices under the policies, procedures or tasks that were amended or adopted by Resolution 1134. The Defendants in that action were as named above.
- C. On March 16, 2005, the Intervenors named above and Jefferson County were granted leave to intervene as parties defendant. Jefferson County subsequently withdrew as a party.
- D. Following briefing and oral argument on September 12, 2005, the Honorable Sharon Armstrong rendered a memorandum opinion on October 20, 2005, finding the Final Environmental Impact Statement on Alternatives for Sustainable Forest Management of State Trust Lands in Western Washington and for Determining the Sustainable Harvest Level, which provided the basis for SEPA compliance for Resolution 1134, to be inadequate as to impacts on the northern spotted owl, riparian management and the alternatives analyzed, but adequate as to the cumulative effects analysis, and determining that because of the failure to comply with SEPA Resolution 1134 must be vacated. Judge Armstrong's memorandum opinion was not reduced to a final judgment.

E. The Plaintiffs, Defendants and Intervenors have negotiated this Settlement Agreement with the intent of better achieving their respective core objectives in this matter than those objectives may be achieved by the further litigation in *WEC v. Sutherland*.

F. The Plaintiffs believe that particularly due to unexpectedly steep declines in northern spotted owl populations, additional short-term protections of northern spotted owl habitat are necessary to insure viability of the owl until new habitat has been established under the Northwest Forest Plan and DNR's Habitat Conservation Plan ("HCP"). Their core objectives are:

1. To provide no net loss of northern spotted owl habitat during the term of this Agreement in order to provide greater short-term protection for the northern spotted owl beyond what was provided by Resolution 1134 during the demographic transition period;

2. To increase public knowledge and understanding of how various forms of innovative silviculture, including what is characterized in a 1996 paper by Carey, *et al* as the "biodiversity pathways approach," may be applied over a wider portion of the forest so as to better reconcile environmental and economic objectives; and

3. To foster effective landscape planning in the Olympic Experimental State Forest (OESF) as a tool for the management of DNR-administered forest lands.

G. For the Defendants, their core objectives are to further principles established by the Board of Natural Resources. DNR stated these principles as follows:

- 1) DNR must act in the best interest of the trust beneficiaries, as established by law and articulated by Board of Natural Resources resolutions;
- 2) DNR must comply with and will act to maintain the integrity of its Habitat Conservation Plan and the landscape approach to conservation which that plan lays out;
- 3) DNR's actions must be demonstrably guided by best available science;
- 4) DNR seeks legal predictability to efficiently guide its trust land management;
- 5) DNR will work to provide the greatest feasible sustainable revenue to trust beneficiaries in the short and long term, while living within expenditure limits;
- 6) DNR seeks outcomes that will receive Board of Natural Resources approval that can be clearly explained to the public in a non-polarizing manner and which lead to consistent and prompt implementation;
- 7) DNR seeks outcomes that provide for active stewardship of as much of the land base as allowable by law. Active stewardship includes the use of innovative and intensive silviculture to develop sustainable, productive, and structurally diverse forest stands and a mosaic of forest structure across landscapes;
- 8) DNR seeks efficiency, effectiveness, and prudence in the application of planning and analysis to guide on-the-ground operations;
- 9) DNR will actively monitor and report on its activities and promote adaptive management; and
- 10) DNR will work actively to protect sensitive lands, including old growth stands not already protected by legal and contractual requirements, with compensation to the trusts.

The Defendants are required by statute to periodically adjust acreages designated for inclusion in the sustained yield management program, and calculate a sustainable harvest level. The “sustainable harvest level” means the volume of timber to be scheduled for sale from state-owned lands during a planning decade. The Defendants view their calculation and implementation of the sustainable harvest level as an integral step in meeting their fiduciary duties to the institutional beneficiaries for whom they manage the lands. In particular, the Defendants believe the sustainable harvest calculation process enables them to meet their duty to make the trusts productive over time, and their duty to administer the trusts impartially for the benefit of both present and future beneficiaries.

H. For the Intervenors, while they recognize the other core objectives of both Plaintiffs and Defendants, their core objective is to obtain the greatest feasible sustainable revenue to trust beneficiaries in the short and long term, within the limits of DNR’s financial resources.

I. This Settlement Agreement is to be interpreted and applied to achieve the core objectives of all of the parties, to the extent possible.

J. This Settlement Agreement follows a period of meetings and discussions that began in November 2005. The parties’ settlement negotiations included two days of site visits to various forest stands, one day in Elbe Forest near Mt. Rainier, and the second day in the Olympic Experimental State Forest (OESF), near Forks. It was also accompanied by an exchange of technical data. A mediator helped the parties during four of their negotiation sessions, and also accompanied the parties on their site visits in the OESF. Throughout their settlement discussions, the parties cooperated in good faith to explore suitable options that meet all parties’ core objectives to the maximum extent possible.

## **AGREEMENT**

### **I. Northern Spotted Owl Conservation Measures.**

#### **A. NRF & Dispersal Management Areas:**

1. Subject to HCP Implementation Memorandum No. 1 (January 12, 1998), no “owl circle” management restrictions are superimposed on the Nesting, Roosting and Foraging (NRF) and Dispersal Management Areas designated in the HCP. DNR will manage the NRF and Dispersal Management Areas in accordance with DNR Procedure 14-004-120 (revised September 2004) and the supplemental spotted owl conservation measures provided for in this Agreement.
2. As provided in DNR Procedure 14-004-120 (revised September 2004), at least 50 percent of Watershed Administrative Units (WAUs) in designated NRF & Dispersal Management Areas will be managed to develop or maintain habitat conditions (as defined in the HCP at IV.11-12). DNR will identify the forest land comprising the 50 percent threshold habitat target guided by the priorities established in DNR Procedure 14-004-120 (revised September 2004).
3. DNR will not authorize or conduct any harvest of existing higher quality (Type A and B)

habitat in designated NRF and Dispersal Management Areas. In sub-mature habitat (as defined in the HCP), within the 50 percent habitat target areas of NRF or Dispersal Management Areas, any harvest or other management activity must maintain habitat conditions and retain or enhance the trajectory of habitat improvement. Within the 50 percent habitat target areas of Dispersal Management Areas, any harvest or other management activity in dispersal habitat that does not meet the criteria for at least sub-mature habitat must maintain habitat conditions or enhance the trajectory of habitat improvement. In WAUs that are above the 50 percent threshold, these restrictions do not apply to habitat in excess of the threshold.

4. "Next best stands" are stands that are not habitat, but are considered by DNR to be closest to meeting the specific criteria for NRF or Dispersal habitat in the HCP and are identified as part of the 50 percent threshold habitat target as described in Section I.A.2 above. In the "next best stands" enhancement activities may be conducted only if the enhancement activities do not increase the amount of time required for the target amount of NRF or Dispersal habitat to be attained if all the stands in that WAU were left unmanaged.
5. Consistent with economic and operational constraints, DNR will concentrate enhancement activities in areas where they will have the greatest habitat benefit, and will make substantial progress towards the habitat enhancement goals presented to the Board of Natural Resources (See Figure 4.2-3 on page 4-16 of the FEIS). DNR will prioritize the "best" stands for enhancement based on the anticipated response to treatment, as determined by DNR. DNR will base stand prioritization decisions primarily on whether volume (biomass) is increasing more than mortality, as measured by, for example, live crown and height to diameter ratios, and ring count per inch. The Department will also consider the number of legacy trees present in the stand, the diversity of tree species in the stand, potential mass wasting areas, access for roads, market conditions, and the locations of suitable habitat and other prioritized stands within the landscape. DNR will also consider opportunities for decadence creation within stands that are deficient in down woody debris or snags.
6. Regeneration harvests may be used as a means of promoting long-term development of habitat in "next-best stands" that will not reach Niche Diversification or Fully Functional stand development stages over the life of the HCP, and where variable density thinnings are not likely to be successful (due to risk of blowdown or other factors) in enhancing the quality of the habitat. Where DNR comes across such a stand, it will document why it believes regeneration harvest is appropriate. Sites managed in this way may be monitored in their development stages by plaintiff groups. Any regeneration harvest occurring as an enhancement activity will follow a variable retention harvest approach including higher levels of retention of legacies including green trees, snags and down woody debris. The following guidelines will be used as a reference in planning variable retention harvests as an enhancement activity:

The objective of a variable retention harvest is to retain the key structural elements of the existing stand while reinitiating the major forest stand cohort. Regeneration is often through planting in openings and matching opening size and

orientation to the silvics of planted seedlings; site preparation is practiced as needed.

Variable retention harvest is extremely flexible in application since it utilizes a continuum of structural retention in creating silvicultural prescriptions to meet specific objectives – in this case, the objective is high quality northern spotted owl habitat (high-quality nesting, Type A and B habitats). It is utilized in cases where a forest stand's response to thinning (partial harvest or thinning) is likely to be poor or risky due to forest health and or wind damage. Decisions regarding (1) what structures to retain on the harvested site, (2) how much of each of the structures to retain, and (3) the spatial pattern for the retention is, of course, highly dependent upon the specific management objectives and current stand conditions.

While a standard prescription is unlikely to be sufficient in all cases, these listed standards provide a point of reference: (1) dispersed and clumped retention of between 10-40 percent (by basal area) of the live trees with preference for structural unique live trees (the threshold target is have a multiple canopied, multiple species stand with at least 15-75 large (30 inches or greater) trees per acre; (2) retention of large (>20 inches diameter) snags in various states of decay (the threshold target is between 3 and 12 snags per acre); (3) retention of large down wood (>20 inches diameter) with a minimum of 5 percent coverage of down woody debris of large logs (the threshold target is to have more than 10 percent coverage of down woody debris); and (4) at least 5 percent of the proposed activity area should be retained in an undisturbed state.

In addition, for an activity to qualify as a Variable Retention Harvest at least three major purposes must be addressed in the silvicultural prescription objectives: (1) “life-boating” of species and processes immediately after harvesting and before forest cover is reestablished; (2) “enriching” the reestablished forest stands with structural features that would otherwise be absent; and (3) “enhancing connectivity” in the managed landscape.

The guidelines above will consider all of the conditions in the management area, including the riparian and wetlands management zones, and other leave trees. However, while the variable retention harvest concept considers the management area as a whole, documentation for proposed timber sales employing these techniques shall describe the site-specific retention elements in the management area, using the above guidelines.

7. It is DNR's good faith intention to actively pursue enhancement in “next best stands,” consistent with market conditions and budget appropriations. As a goal and for reference only, the Department plans to target the same number of acres for enhancement activities in NRF and Dispersal Management Areas as was modeled during the sustainable harvest calculation process for the BNR's adopted alternative (i.e., roughly one acre of enhancement for each acre of regeneration harvest). Habitat enhancement may include practices such as pre-commercial thinning, variable-density commercial thinning, partial

harvest, variable retention harvest (as described in Section I.A.6, above), and decadence management or enhancement.

8. The remaining 50 percent of WAUs in designated NRF & Dispersal Management Areas that are considered non-habitat are available for the full range of DNR silvicultural activities permitted under the HCP.

**B. Olympic Experimental State Forest (OESF)**

1. Subject to HCP Implementation Memorandum No. 1 (January 12, 1998), no "owl circle" management restrictions are superimposed on the OESF HCP planning unit. DNR will manage the OESF in accordance with the OESF conservation strategy in the HCP and the supplemental northern spotted owl conservation measures provided for in this Agreement.
2. For the term of this Agreement, DNR will not authorize or conduct any harvest in "old forest" stands as those stands have been mapped and field verified, and are identified in the maps attached as Appendix A to this Agreement, in the color purple.
3. DNR has identified from its inventory those stands that are not "old forest," but that have the structural characteristics of sub-mature or young-forest marginal habitat (hereafter referred to as "Structural Habitat"). Stands of "Structural Habitat" are depicted on the maps set out in Appendix A to this Agreement, in the color green.
4. The Department will proceed with forest land planning for the OESF Planning Unit, second in line behind the South Puget Planning Unit. The Sustainable Harvest Implementation Plan ("SHIP") for the OESF will include all elements of the landscape planning process required by the HCP. Plaintiffs and Intervenors will be invited to participate in the forest land planning process for the OESF along with other interested parties.
5. DNR will impose a planning goal in the forest land planning process, along with other planning goals, to retain all old forest and Structural Habitat for the duration of this Agreement.
6. Prior to adoption of the SHIP for the OESF by the Lands Steward, DNR will not conduct any regeneration harvest in Structural Habitat. Any regeneration harvest will be confined to stands that are not Structural Habitat. Any other management activity in Structural Habitat will sustain or improve habitat quality. Pending adoption of the SHIP for the OESF, the amount of regeneration harvest in stands over age 50 that are not Structural Habitat will be subject to the acreage limits in the OESF's interim HCP implementation procedure for northern spotted owls (PR-HCP-021(e), June 1997).
7. Following adoption of the SHIP for the OESF, except for "old forest" as mapped in purple on Appendix A, stands that are over age 50 will be managed subject to the SHIP and the OESF conservation strategy in the HCP, but are otherwise available for the full range of DNR silvicultural activities.



8. Stands that are younger than age 50 that are not Structural Habitat will be managed subject to the OESF conservation strategy in the HCP, but are otherwise available for the full range of DNR silvicultural activities.
9. In Structural Habitat and non-habitat, enhancement activities will be performed to meet OESF landscape level habitat targets. DNR agrees to perform at least the same number of acres of enhancement activities as regeneration harvests, measured across the entire OESF during the entire period of the Agreement. For purposes of this provision, "enhancement activities" include commercial thinning, variable density thinning, variable retention harvests (as described in Section I.A.6, above), and partial harvests.
10. Consistent with economic and operational constraints, DNR will concentrate enhancement activities in areas where they will have the greatest habitat benefit, and will make substantial progress towards the habitat enhancement goals presented to the Board of Natural Resources. DNR will prioritize the "best" stands for enhancement based on the anticipated response to treatment, as determined by DNR. DNR will base stand prioritization decisions primarily on whether volume (biomass) is increasing more than mortality, as measured by, for example, live crown and height to diameter ratios, and ring count per inch. The Department will also consider the number of legacy trees present in the stand, the diversity of tree species in the stand, potential mass wasting areas, access for roads, market conditions, and the locations of suitable habitat and other prioritized stands within the landscape. DNR will also consider opportunities for decadence creation within stands that are deficient in down woody debris or snags.

C. Owl Areas Outside of NRF, Dispersal and OESF

1. "Owl Areas" refers to those areas which were (a) designated in HCP Implementation Memorandum No. 1 (January 12, 1998), (b) within Washington Department of Fish and Wildlife (WDFW) Status 1-R (reproductive) owl circles, and (c) within the four areas identified in Standard Practice Memorandum SPM 03-07 (*Management of Northern Spotted Owl Circles And The Identification Of Northern Spotted Owl Habitat In Southwest Washington*). It does not include any areas within NRF or Dispersal Management Areas or the OESF.
2. Within Owl Areas, DNR will not harvest in the highest quality (Type A & B) habitat. Management activities in sub-mature or young forest marginal habitat will retain habitat function (i.e. may be degraded but will remain as habitat). DNR will avoid or minimize thinning activities in owl habitat in Owl Areas where a nesting pair of northern spotted owls has been observed by DNR or the Washington Department of Fish and Wildlife (WDFW) in the previous year. Non-habitat lands within Owl Areas are available for the full range of DNR silvicultural activities permitted under the HCP. Until January 2007, harvest in Owl Areas shall remain subject to HCP Implementation Memorandum No. 1 (January 12, 1998).
3. Subject to other provisions of the HCP, no harvest restrictions will apply on state forest lands (formerly Forest Board Lands) in Owl Areas in Wahkiakum or Pacific Counties.

As mitigation for the loss of habitat in these Owl Areas, by June 30, 2014, DNR will conduct an acre of enhancement activities (defined to include only variable density thinning and decadence creation) in “next best stands” within NRF Management Areas in Western Washington for each acre of habitat harvested in the Owl Areas released under this paragraph. These enhancement activities may be conducted over the life of the Agreement, but should be reasonably spread over the agreement period. The acres of enhancement required by this section will not count toward the enhancement target provided for in Section I(A)(7) and will only be required if the legislature re-authorizes a 30 percent deduction from money received from management activities on federally granted lands for the Resource Management Cost Account as described in RCW 79.64.040(3) and (5) (2005).

**D. Spotted Owl Habitat Delineation.**

1. Habitat Types within NRF and Dispersal Management Areas and Owl Areas will be defined in accordance with DNR’s inventory data as of the effective date of this Agreement, and will be the determining factor in habitat delineations. In NRF and Dispersal Management Areas, the maps in Appendix B identify high quality spotted owl habitat (Types A & B) in color purple, what is sub-mature habitat in color green, and what is dispersal habitat in color orange. Appendix B also includes areas that are “unknown,” which might or might not be habitat, in color tan. In Owl Areas, the maps in Appendix C identify high quality spotted owl habitat (Types A & B) in color purple, sub-mature or young-forest marginal habitat in color green, and areas that are “unknown,” which might or might not be habitat, in color tan. In the OESF, the maps in Appendix A identify “old forest” habitat in color purple (discussed in Section I(B)(2) above), “Structural Habitat” in color green (discussed in Section I(B)(3) above) and areas that are “unknown,” which might or might not be habitat, in color tan. Habitat typing during the term of the Agreement will be subject to change only based on the express written agreement of the parties.
2. If Plaintiffs are later concerned that a timber sale is being planned in sub-mature or young-forest marginal habitat that DNR should have categorized as higher quality Type A or B habitat in its inventory data, they will notify DNR in writing and DNR will promptly arrange a site visit with Plaintiffs. DNR may treat the site as higher quality habitat if the parties agree that the site meets the criteria for Types A or B habitat.
3. Prior to harvest of any areas classified as “unknown” in NRF and Dispersal Management Areas, the OESF, or the Owl Areas covered by this Agreement, DNR will conduct an inventory survey according to DNR’s standard inventory procedures to determine the actual classification of the habitat type and will manage the area in accordance with the terms of this Agreement.
4. The parties disagree on the appropriate way to apply the Down Woody Debris (DWD) component of the definition of sub-mature and young forest marginal habitat. The area of disagreement concerns whether DNR’s method for converting the percent of DWD by area to volume is appropriate. The different definitions involve approximately 26,700

acres of “disputed stands.” The “disputed stands” will be identified in color grey on the maps in Appendices A and C. To resolve this disagreement the following will occur:

- a. For the next 12 months, DNR will not conduct regeneration harvests in the “disputed stands,” after which period management in these stands will follow this Agreement and the HCP.
  - b. During the 12 month period, a technical work group of the Parties, the U.S. Fish and Wildlife Service, and WDFW will convene to examine the method for implementing the DWD component of the definitions of sub-mature habitat (HCP at IV.12) and young forest marginal habitat (as found in the HCP, Glossary, page 17, and WAC 222-16-085(1)(b)(i)), with particular focus on the conversion between volume and percent surface area by acre. This process will review the existing methodology and, as necessary, develop the methodology which most faithfully applies the definitions of sub-mature and young forest marginal as found in the HCP and WAC 222-16-085(1)(b)(i). Upon the completion of this process, and approval of any new methodology by DNR and USFWS, DNR will adjust the maps in Appendices A, B and C accordingly, if needed.
5. Confidentiality of Appendix C: Appendix C may include sensitive wildlife data, as that term is defined in RCW 42.17.310(1)(yy) (to be recodified on July 1, 2006 at 42.56.430(2)). In order to protect this potentially sensitive data, the parties agree not to provide to third persons copies of the maps in Appendix C at any scale that shows more detail than 1” to 30 miles (i.e., all of Western Washington on a single, 8½” by 11” sheet of paper), except that they may provide Appendix C at whatever scale necessary to qualified experts they have retained to assist them with technical issues. Before sharing Appendix C with qualified experts, the expert must sign the Data Sharing Notice and Acknowledgement attached as Appendix D and send a copy of the signed form to: Office of the Attorney General, Attn: Division Chief, Fish, Wildlife, and Parks Division, PO Box 40100, Olympia, WA, 99504-0100.

Parties to this agreement subject to the Public Disclosure Act will treat any request for more detailed Appendix C map information than 1” to 30 miles as exempt from public disclosure, and will withhold the same, to the extent allowed by law or regulation. If any party subject to the Public Disclosure Act receives a request for more detailed map information and concludes that applicable law or regulation does not allow withholding of the information from public disclosure, the party will provide to the WDFW at least thirty days advance notice of release of the information, so that the WDFW may pursue a protective order under RCW 42.17.330 (to be recodified on July 1, 2006 at RCW 42.56.540). Notice to the WDFW shall be provided in two ways: (1) to the attention of the WDFW Public Records Officer at the following address: 600 Capitol Way N., Olympia, WA 98501-1091, and (2) to the Division Chief of the Fish, Wildlife, and Parks Division of the Attorney General’s Office, at PO Box 40100, Olympia, WA, 99504-0100.

## **II. Innovative Silviculture**

- A. DNR will set up demonstration projects in the OESF testing Dr. Andrew Carey's biodiversity pathways treatment principles, which are replicated in several areas and demonstrate the application of different scales of openings, scale of variation and overstory retention on forest management units at a stand level. The demonstration projects will be established with a peer reviewed scientific design intended to replicate the same two or three variations on the same types of stands. These demonstration projects will be developed and implemented as part of the OESF SHIP during the term of this Agreement.
- B. Modeling Exercise: DNR will initiate a modeling exercise to examine alternative innovative silvicultural techniques, including those proposed by Dr. Andrew Carey, across the OESF. This modeling exercise will likely provide information useful to the design of research projects in the OESF. This 100-year modeling exercise will examine various key variables in relation to existing DNR objectives, such as but not limited to: varying rotation lengths, patch (opening) sizes, retention amounts, environmental impacts at various geographic scales (for example, stand, sub-basin, watershed, landscape, and WRIA), and economic feasibility. DNR will invite a qualified representative of the Plaintiffs and Intervenors to participate on a technical review committee which will be limited to the parties. The technical review committee will provide input on modeling assumptions and assist in the design of the modeling scenarios. Independent peer review by a mutually accepted peer review committee will be sought. The modeling exercise will be limited by reasonable technical, time and cost constraints. The parties will attempt to reach consensus on the design of the modeling exercise under this section. If consensus cannot be reached, the modeling exercise will not occur as a part of this Agreement. It is anticipated that it may take a year or more to complete the modeling design and to run the model once the process has been initiated. DNR will initiate the process within the next twelve months. In addition, DNR will seek to publish the modeling work in a peer-reviewed journal.

## **III. Other Land Management Policy**

- A. Upon the effective date of this Agreement, the 50/25 rule set forth in Task 14-001-010 will no longer apply to DNR management of forest lands in Western Washington.
- B. The Department will manage leave trees in stands that are regenerated in accordance with the HCP and Procedure 14-006-090 (revised September, 2004) such that it will leave eight or more trees per acre, in addition to those left in riparian or wetland management zones.
- C. The Riparian Forest Restoration Strategy which received concurrence from the U.S. Fish and Wildlife Service and NOAA-Fisheries Service (the "Federal Services") in 2005 ("RFRS") will become effective within two months following the effective date of this Agreement.

- D. The Department will run the sustainable harvest model to reflect the commitments of this Agreement and the RFRS, and present the results to the Board of Natural Resources. DNR will make every reasonable effort to complete this modeling as soon as feasible in the context of its total workload. The BNR will make a decision on an adjustment to the sustainable harvest level based upon the modeling results and additional SEPA documentation no later than the end of the 2007 calendar year.
- E. The Policy for Sustainable Forests (PSF) will be brought to the Board of Natural Resources for its approval within three months following the effective date of this Agreement.
- F. Within one year of the effective date of this Agreement, DNR will have discussions with Plaintiffs about the development of an old growth identification process for Eastern Washington.

#### **IV. Implementation**

- A. The forest land planning process will continue. The SHIP for the OESF Planning Unit will be second in line (after the South Puget Planning Unit), and will include all elements of the landscape level planning process required by the HCP.
- B. Timber harvest schedules for planned sales will be developed by each region and county, each year. DNR will invite Plaintiffs to review and discuss these schedules, as DNR does for other interested groups.
- C. All of the DNR's silvicultural activities will be recorded into its Planning and Tracking database. This will show the silvicultural objectives and threshold targets envisioned to achieve the objectives.
- D. DNR has an active HCP implementation monitoring program, and the reports DNR generates for the Federal Services will be shared with the Plaintiffs.
- E. The parties will hold annual meetings in the fall of each year to discuss issues pertinent to the implementation of this Agreement including projected harvest activities in spotted owl habitat. At this meeting, DNR will present its annual harvest plans for spotted owl habitat in NRF and Dispersal Management Areas, the OESF, and the Owl Areas covered by this Agreement, including proposed enhancement activities, and the parties will attempt to resolve any disagreements over proposed harvest and enhancement in owl habitat. The harvest plans presented at this annual meeting will include at a minimum the location of proposed timber sales, the habitat type of the stands involved, and the type of harvest or treatment proposed. Additional follow up meetings may be scheduled if requested by any party. DNR will give the parties notice of any new forest management projects not discussed at the annual meeting or major changes to harvest activities that were discussed at the annual meeting, and will provide the parties with a reasonable opportunity to initiate the dispute resolution process prior to commencing ground-disturbing forest practice activities.

F. DNR will support reasonable requests of the Plaintiffs for private, third-party funding for the purposes of implementing this Agreement.

**V. Legal Resolution**

- A. Within 5 days of the effective date of this Agreement, *WEC v. Sutherland* will be dismissed voluntarily with prejudice or by stipulation of the parties (or if judgment has already been entered, the parties will submit a joint motion to the superior or appellate court seeking a vacation of the judgment and dismissal).
- B. Plaintiffs waive any challenge to a recalculation of the sustainable harvest level and accompanying State Environmental Policy Act (SEPA) document that implements Section III.D of this Agreement.
- C. Plaintiffs waive any challenge to the RFRS and any accompanying SEPA document.
- D. During the term of this Agreement, Plaintiffs waive challenges to future DNR timber sales on the basis of impacts to northern spotted owls provided that such sales are in accordance with this Agreement.
- E. Plaintiffs waive any challenges to the forthcoming Policy for Sustainable Forests Environmental Impact Statement (EIS) that are based upon the adequacy of the June 2004 Final EIS for the Sustainable Harvest Calculation. If Plaintiffs intend to challenge the Policy for Sustainable Forests or the EIS for any other reason, Plaintiffs shall follow the dispute resolution process outlined in Section VII.A of this Agreement (below). Failure to follow the dispute resolution process with respect to a challenge to the Policy for Sustainable Forests will result in a waiver of the claim.
- F. Plaintiffs will not challenge the SHIP for the OESF, or any timber sale implementing the SHIP for the OESF, based on impacts to the spotted owl, provided that the SHIP attains the spotted owl planning goal of preserving all old forest and Structural Habitat in each landscape planning unit under Section I(B)(5) of this Agreement for the duration of this Agreement. During the term of this Agreement, any future challenge to the OESF SHIP, or a timber sale implementing the SHIP, based on impacts to the spotted owl will be limited to the non-attainment of the goal of retention of all old forest and Structural Habitat.
- G. Plaintiffs and their legal counsel have a duty of good faith and fair dealing not to encourage other groups or individuals to raise legal claims they have agreed to waive in this settlement.
- H. The parties recognize and understand that unforeseen circumstances may arise under this Agreement. The parties agree to use the dispute resolution process to raise such issues to the attention of the other parties. The parties shall work cooperatively to try to find a mutually agreeable solution for any unforeseen circumstances. Any amendments to this Agreement shall be in writing, and shall be signed by the parties' principals.

## **VI. Management Fee for Resource Management Cost Account.**

Prior to and during the 2007 legislative session, all of the parties will actively support the legislative re-authorization of a 30 percent deduction off money received from management activities on federally granted lands, for the Resource Management Cost Account. This deduction is described in RCW 79.64.040(3) and (5) (2005).

## **VII. Communications and Dispute Resolution**

- A. **Dispute Resolution Process:** If any party to this Agreement believes that another is in violation of their commitments under the Agreement, they have a duty to ask for a meeting with the party alleged to be out of compliance before taking any other action (i.e., filing a legal challenge in any forum; or taking the issue to outside parties such as the press, legislators, the Federal Services, or publishing critiques in newsletters to their members). The DNR shall be represented at such meetings by its Lands Steward or equivalent, and other participating parties shall be represented through personnel with decision-making authority in their organizations. The meeting will occur within two weeks from the time the request is received by the other parties, unless otherwise agreed. Such agreement will not be unreasonably withheld. The purpose of the meeting is to have all parties mutually understand the issue and resolve it if possible. Future meetings may also occur. All parties shall cooperate in good faith to make the process work. Once the parties begin the dispute resolution process, if a party wishes to communicate with non-parties about compliance issues, they may do so after informing the other parties of their intention. The dispute resolution process will conclude 30 days after the non-initiating party has delivered a written description of the result of the process to the other parties. Where the dispute involves a proposed timber management activity, DNR will not allow ground-disturbing forest practice activities to occur until the dispute resolution process is complete.
- B. No legal dispute between the parties relating to compliance with this Agreement will be ripe unless the parties have followed the dispute resolution process under this Agreement; however, if the dispute involves an administrative or judicial appeal and that appeal cannot be timely filed before the dispute resolution process has been concluded as provided in Section VII(A) above, the appeal may be filed and, unless directed otherwise by a court or administrative tribunal, all litigation under that appeal shall be put in abeyance until the dispute resolution process is concluded.
- C. The parties intend to build a relationship of collaboration and trust during the term of this Agreement. Building trust requires that parties acknowledge the legitimacy of the goals and interests of the other parties to this Agreement and conduct themselves in a transparent and respectful manner in working to reconcile these competing goals and interests. During the term of this Agreement, the parties will commit themselves to open, truthful, serious, and constructive dialog when meeting with each other in private and engaging in public communications.
- D. DNR and the other parties to this Agreement recognize it is in their best interest to resolve issues and concerns outside of the courts whenever possible. Cooperation

between DNR and the other parties is emphasized. The parties in good faith will pursue reasonable discussions before pursuing judicial resolution. In these discussions, DNR and the other parties will seek mutually beneficial outcomes.

**VIII. Miscellaneous.**

- A. The effective date of this Agreement is the date upon which the Defendants and all of the Plaintiffs have executed this Agreement. This Agreement terminates when the BNR approves a sustainable harvest calculation extending beyond FY 2014, but no earlier than June 30, 2014, the end of the present planning decade, and all commitments terminate on that date unless otherwise specifically noted. Nothing herein affects the longevity of the DNR's HCP commitments.
- B. This Agreement may be executed by facsimile and in counterparts.

**WASHINGTON ENVIRONMENTAL COUNCIL**

By ✓ Joan Crooks  
Joan Crooks, Executive Director

**NATIONAL AUDUBON SOCIETY**

By ✓ Nina Carter  
Nina Carter, Executive Director  
Audubon Washington

**NORTHWEST ECOSYSTEM ALLIANCE**

By ✓ Mitch Friedman  
Mitch Friedman, Executive Director  
NWEA (now Conservation Northwest)

**OLYMPIC FOREST COALITION**

By ✓ Bonnie Phillips  
Bonnie Phillips, Executive Director

**DOUG SUTHERLAND**

By ✓ Doug  
Commissioner of Public Lands

**BOARD OF NATURAL RESOURCES**

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Doug Sutherland, Chair

**DEPARTMENT OF NATURAL RESOURCES**

By ✓ Doug  
Doug Sutherland  
Commissioner of Public Lands



✓ AMERICAN FOREST RESOURCE COUNCIL

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Its Chairman

✓ PACIFIC COUNTY

By Jon Kaino, District #1  
Its Chairman

SNOHOMISH COUNTY

By \_\_\_\_\_  
Its \_\_\_\_\_

✓ SKAGIT COUNTY

By Kenneth Pahlstedt, District #2  
Its Chairman

SKAMANIA COUNTY

By \_\_\_\_\_  
Its \_\_\_\_\_

✓ CITY OF FORKS

By Nedra Reed  
Its Mayor

QUILLAYUTE VALLEY SCHOOL DISTRICT NO. 402

By \_\_\_\_\_  
Its \_\_\_\_\_

✓ TOUTLE LAKE SCHOOL DISTRICT NO. 130

By Scott Graberhorst  
Its Superintendent

✓ CASTLE ROCK SCHOOL DISTRICT NO. 401

By Richard Wilde  
Its Superintendent

✓ WILLAPA VALLEY SCHOOL DISTRICT NO. 160

By Gary Aust  
Its Board President

✓ PACIFIC COUNTY HOSPITAL DISTRICT NO. 2 d.b.a. WILLAPA HARBOR HOSPITAL

By Terry Stone  
Its Chief Financial Officer