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**POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON**

GEORGE N. VALISON and QUAIL  
LANE DEVELOPMENT LLC, and  
DAVID G. BAKER and D. BAKER  
CONSTRUCTION AND  
EXCAVATING,

Appellants,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 13-159c

SETTLEMENT AGREEMENT

Respondent, State of Washington, Department of Ecology (“Ecology”), represented by Robert W. Ferguson, Attorney General and Christopher H. Reitz, Assistant Attorney General, and George N. Valison and Quail Lane Development, LLC, (“VALISON”) represented by Johnson, Gaukroger, Smith & Marchant, P.S., Phillip R. Johnson, and Aaron J. Harris, and Appellants, David G. Baker and D. Baker Construction and Excavating (“BAKER”), represented by David G. Baker, appearing *pro se* as to himself, hereby submit this Settlement Agreement (“Agreement”) to the Pollution Control Hearings Board (“Board”) as a full and final settlement of the above-referenced appeal, and request that the Board dismiss the appeal with prejudice.

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**I. BACKGROUND**

1. VALISON developed the Quail Lane Condominiums Development in Cashmere Washington and is a member and former President of the Quail Lane Homeowner's Association.

2. BAKER is a contractor who conducted excavation work in and around Mission Creek at the Quail Lane Condominiums site.

3. On or about February 25, 2012, extremely high water created a restriction scour in Mission Creek, which caused the diversion of water out of its normal flow and into the bank behind the Quail Lane Condominiums Development. The diverted water flow eroded and destabilized the river bank.

4. On Friday September 14, 2012 BAKER and VALISON ("Appellants") removed debris and silt causing the restriction scour in Mission Creek and placed small boulders near the eroding river bank to provide additional stability. On November 14, 2012, Ecology issued Notice of Violation ("NOV") Docket #9619 to BAKER and NOV #9620 to George Valison.

5. On November 25, 2013, Ecology issued Notice of Penalty Incurred and Due ("Penalty") Penalty Docket #10380 in the amount of \$20,000.00 to VALISON, Administrative Order Docket #10381 ("AO #10381") to VALISON, and Penalty #10382 in the amount of \$20,000.00 to BAKER.

6. On December 23, 2013, BAKER and VALISON appealed Penalties #10380 and #10382 and Administrative Order #10381 in three separate appeals.

7. The Board consolidated these three appeals as PCHB No. 13-159c, by order dated January 28, 2014.

8. Ecology, VALISON, and BAKER have agreed to resolve these consolidated appeals through the settlement outlined below.

1 **II. SETTLEMENT AGREEMENT**

2 The parties desire to resolve the dispute herein and avoid the cost, time, and  
3 uncertainty associated with further litigation. It is expressly understood and agreed that  
4 Appellants do not admit any violations of law or liability and that the execution and  
5 performance of this Agreement should not, for any purpose, be offered, taken, construed, or  
6 introduced otherwise as evidence of liability, or as an admission or statement of liability in  
7 any proceeding of any kind by any party. Now, therefore, the parties therefore stipulate and  
8 agree as follows:

9 **A. SCOPE**

10 This Agreement constitutes the entire agreement between the parties to this appeal, and  
11 settles all issues raised by Penalties #10380 and #10382 (“the Penalties”) and the appeal of  
12 Administrative Order #10381. Ecology agrees to deem the Penalties each independently  
13 satisfied upon VALISON and BAKER’s satisfactory and timely completion of their respective  
14 obligations under this Agreement. This Agreement applies only to Penalties #10380 and  
15 #10382 and Administrative Order #10381 issued on November 25, 2013, and the appeals  
16 therefrom as consolidated under PCHB No. 13-159c. This Agreement does not in any way  
17 limit Ecology’s authority to issue other penalties or enforcement actions for violations not  
18 associated with the claims under PCHB No. 13-159c or to take enforcement action under  
19 Paragraph (II)(B)(3) of this Agreement; nor does it affect Appellants’ rights to appeal any said  
20 other penalties or enforcement actions.

21 **B. RESOLUTION OF VALISON’S APPEAL OF THE ADMINISTRATIVE  
22 ORDER**

23 **1. Compliance with Administrative Order #10381**

24 VALISON agrees to comply with AO #10381 as herein modified without further right  
25 of administrative or judicial review, except as otherwise provided in this Agreement.  
26 Administrative Order #10381 is attached to this Agreement as Attachment A.

1           **2. Project timeline**

2           VALISON agrees to complete Mission Creek bank work (“the project”) consistent  
3 with, and set forth in, AO #10381 by **July 31, 2015**, except as modified by this Agreement.  
4 This obligation is subject to a change in the project implementation schedule due to unforeseen  
5 circumstances beyond VALISON’s control, including but not limited to obtaining review and  
6 written approval from Ecology of any plan changes required if problems arise during  
7 implementation or construction. VALISON will have met this project timeline requirement  
8 upon completion of the construction phase of the project by the deadline, and submission of a  
9 timely as-built report to Ecology thereafter, even if vegetation monitoring requirements in  
10 applicable permits remain in place for some additional period of time.

11           **3. Ecology reserves full authority to enforce Administrative Order #10381**

12           Ecology reserves its full authority to enforce AO #10381 after July 31, 2015 if  
13 VALISON has not completed the project under Paragraph (II)(B)(2) of this Agreement, or at  
14 any time after abandonment under Paragraph (II)(C)(2) of this Agreement.

15           **C. RESOLUTION OF PENALTY #10380 ISSUED TO VALISON**

16           **1. Confession of Judgment**

17           VALISON agrees to execute a Confession of Judgment in favor of Ecology in the  
18 amount of \$20,000.00 for Ecology to hold, enter, and/or return pursuant to this agreement. A  
19 copy of the original Confession of Judgment is attached to this Agreement as Attachment B.

20           Ecology shall hold and not present for entry the original executed Confession of  
21 Judgment pending VALISON’s compliance with this Agreement in full. In the event that  
22 VALISON defaults on this Agreement, Ecology shall be entitled to file the original Confession  
23 of Judgment with the Thurston County Superior Court, seek to obtain a judgment and pursue  
24 collection on the same pursuant to Chapter 4.60 RCW. Upon entry, the Confession of  
25 Judgment shall bear interest at the rate of eight (8) percent per annum.  
26

1 Not less thirty (30) days prior to presentment and entry of the Confession of Judgment,  
2 Ecology shall provide written notice to VALISON of Ecology's determination of default and  
3 intent to present and enter said judgment. VALISON shall then have the right to exercise any  
4 available remedies as provided in Paragraph (II)(E).

5 Upon VALISON'S completion of the obligations created under Paragraph (II)(B)(2),  
6 Ecology shall immediately return the original Confession of Judgment to VALISON and  
7 release VALISON from any further obligation to pay Penalty #10380 and from any further  
8 obligations relative to AO #10381.

9 **2. Abandonment**

10 If at any time VALISON clearly abandons implementing the project described under  
11 Paragraph (II)(B)(2) of this Agreement, Ecology may enter the Confession of Judgment under  
12 Paragraph (II)(C)(1), on condition that, consistent with Paragraph (II)(C)(1), not less than  
13 thirty (30) day prior to presentment and entry of the Confession of Judgment Ecology provides  
14 written notice to VALISON of its determination that VALISON has abandoned the project.  
15 VALISON shall have the right to exercise any available remedies as provided in Paragraph  
16 (II)(E).

17 **D. RESOLUTION OF PENALTY #10382 ISSUED TO BAKER**

18 **1. Reduction of penalty amount**

19 Ecology agrees to waive \$10,000.00 of Penalty #10382, subject to Paragraph (II)(D)(2)  
20 of this Agreement, thereby reducing the penalty amount from \$20,000 to \$10,000.

21 **2. Cash Payment of \$5,000.00 pursuant to payment plan**

22 BAKER agrees to pay \$5,000 of the penalty to Ecology in 12 monthly payments over  
23 the course of one year pursuant to the following payment plan:

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July 1, 2014	\$416.67
Aug. 1, 2014	\$416.67
Sept. 1, 2014	\$416.67
Oct. 1, 2014	\$416.67

Nov. 1, 2014	\$416.67
Dec. 1, 2014	\$416.67

Jan. 1, 2015	\$416.67
Feb. 1, 2015	\$416.67
Mar. 1, 2015	\$416.67
Apr. 1, 2015	\$416.67
May. 1, 2015	\$416.67
Jun. 1, 2015	\$416.63

TOTAL	\$5,000.00
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BAKER shall make each payment by check or money order directly payable to "Department of Ecology" and make reference to Penalty #10382, and shall send the payment to:

Department of Ecology  
Attn: Cashiering Unit  
P.O. Box 47611  
Olympia, WA 98504-7611

If BAKER wishes to pay early, BAKER may pay the outstanding balance due under this payment plan at any time to discharge the obligation to make the cash payment of \$5,000.00 under this Paragraph.

If a payment is received by Ecology after a payment due date, but within 5 days of that due date, BAKER will add a \$50 late fee to the next payment. If the next payment is not received on time with the \$50 late fee, or if any payment due is not received within 5 days of the due date, the entire \$20,000.00 penalty amount will become due and payable to Ecology at that time and BAKER agrees to be subject to the obligation to pay the full \$20,000.00 penalty without further right of administrative or judicial review, except as provided in Paragraph (II)(E) of this Agreement.

**3. Remaining penalty amount of \$5,000.00 held in abeyance for three years**

In consideration of the circumstances of this case, Ecology agrees to suspend the remaining penalty balance of \$5,000.00 for three years and hold that amount in abeyance pending BAKER's compliance with state water quality law, under Chapter 90.48 RCW, and state shorelands law, under Chapter 90.58 RCW, for three (3) years from the effective date of this Agreement. If BAKER violates Chapter 90.48 RCW or Chapter 90.58 RCW at any time

1 during the three (3) years following the effective date of this Agreement, the balance of the  
2 penalty not already paid to Ecology will become immediately due and payable to Ecology  
3 without further right of administrative or judicial review, except as provided in Paragraph  
4 (II)(E) of this Agreement. If BAKER complies with the terms of this Agreement, after three  
5 years from the effective date of this Agreement Ecology will release the remaining \$5,000.00  
6 penalty amount from abeyance and waive that penalty amount at that time.

7 **E. REMEDIES**

8 In the event that any party to this Agreement violates the terms of this Agreement, the  
9 non-defaulting party may pursue all remedies available by law with respect to the defaulting  
10 party. A determination of default includes, but is not limited to, VALISON's abandonment of  
11 the project or failure to timely complete the project. Any party to this Agreement may petition  
12 the Superior Court of Thurston County to determine the rights and obligations of this  
13 Agreement, including but not limited to a determination of whether any party to this  
14 Agreement has breached the terms of this Agreement and/or is in default with respect to the  
15 obligations and duties herein set forth. The non-defaulting party shall be entitled to recover its  
16 costs, including attorney fees, in any action brought to enforce this Agreement in which said  
17 party is the prevailing party. By entering into this Agreement, Appellants shall have waived  
18 their rights of administrative or judicial review on the underlying merits of the Penalties and  
19 Order. However, Appellants do not waive the right to contest whether violations of this  
20 Agreement have occurred.

21 **F. VENUE**

22 Appellants agree that the venue for any judicial action to enforce this Agreement and/or  
23 to collect the Penalties, or any portion thereof, shall be in Thurston County Superior Court.

24 **G. WAIVER OF APPEAL RIGHTS**

25 Appellants understand that they have the right to contest the Penalties and Order that  
26 they appealed by presenting evidence at a Board hearing. Appellants voluntarily waive their

1 rights to a board hearing on the appeal upon signature and acceptance of this Agreement by  
2 themselves and/or their representatives and by Ecology.

3 **H. PRESS RELEASES AND OTHER DOCUMENTS**

4 Ecology will arrange a reasonable opportunity for VALISON to review its draft press  
5 release related to this Agreement for accuracy and comment before issuance. However,  
6 nothing in this paragraph is meant to limit Ecology's ability to determine the final content of  
7 any press release or other communications. Furthermore, any overview, announcement, or  
8 other such document prepared by Appellants related to this settlement, such as a press release,  
9 shall be identified as resulting from a settlement with Ecology.

10 **I. RELEASE OF LIABILITY**

11 Except for the obligations arising from this Agreement, and subject to all terms of this  
12 Agreement, Appellants, their heirs, assigns, or other successors in interest, and Ecology, agree  
13 to release and discharge each other and their officers, agents, employees, agencies and  
14 departments from any and all claims, demands, liabilities, damages, costs, expenses, and  
15 causes of action of any nature arising out of the incidents that gave rise to this appeal, subject  
16 to the terms of this Agreement.

17 **J. DISMISSAL OF APPEAL**

18 The parties consent to the submission of this Agreement to the Board and request that,  
19 based upon a full and final settlement having been reached, the Board dismiss this appeal with  
20 prejudice. All parties further agree to bear their own costs and attorneys' fees associated with  
21 this appeal.

22 **K. EFFECTIVE DATE**

23 This Agreement shall become effective upon issuance of the Board's order dismissing  
24 this appeal.

1 **L. SIGNATORIES AUTHORIZED**

2 The undersigned representatives for Ecology and Appellants certify that they are fully  
3 authorized by the party whom they represent to enter into the terms and conditions of this  
4 Agreement and to legally bind such party thereto.

5 **M. EXECUTION**

6 This document may be executed in counterparts and may be executed by facsimile  
7 and/or electronically, and each executed counterpart shall have the same force and effect as the  
8 original instrument.

9 STATE OF WASHINGTON  
10 DEPARTMENT OF ECOLOGY

GEORGE N. VALISON  
QUAIL LANE DEVELOPMENT LLC

11 \_\_\_\_\_  
12 Gary Graff  
13 Regional Section Manager  
14 Shorelands and Environmental Assistance  
15 Central Regional Office

  
George N. Valison

14 Dated: \_\_\_\_\_

Dated: 5-27-14

16 ROBERT W. FERGUSON  
17 Attorney General

JOHNSON, GAUKROGER, SMITH &  
MARCHANT, P.S.

18 \_\_\_\_\_  
19 Christopher H. Reitz, WSBA #45566  
20 Assistant Attorney General  
21 Attorneys for Respondent  
22 360-586-6770

  
Aaron J. Harris, WSBA #36802  
Attorneys for Appellants George N.  
Valison and Quail Lane Development,  
LLC

21 Dated: \_\_\_\_\_

Dated: 5-27-14

23 DAVID BAKER and D BAKER  
24 CONSTRUCTION AND EXCAVATING

25 \_\_\_\_\_  
26 David G. Baker, *pro se*

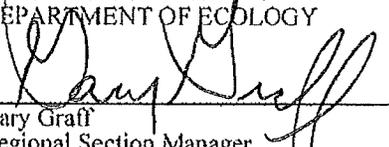
Dated: \_\_\_\_\_

1 L. SIGNATORIES AUTHORIZED

2 The undersigned representatives for Ecology and Appellants certify that they are fully  
3 authorized by the party whom they represent to enter into the terms and conditions of this  
4 Agreement and to legally bind such party thereto.

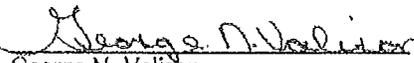
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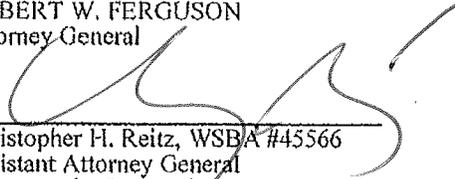
9 STATE OF WASHINGTON  
10 DEPARTMENT OF ECOLOGY  
11   
12 Gary Graf  
13 Regional Section Manager  
14 Shorelands and Environmental Assistance  
15 Central Regional Office

14 Dated: 5/29/14

GEORGE N. VALISON  
QUAIL LANE DEVELOPMENT LLC

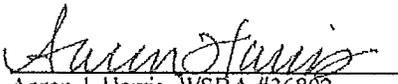
  
George N. Valison

Dated: 5-27-14

16 ROBERT W. FERGUSON  
17 Attorney General  
18   
19 Christopher H. Reitz, WSBA #45566  
20 Assistant Attorney General  
21 Attorneys for Respondent  
22 360-586-6770

21 Dated: 5/29/14

JOHNSON, GAUKROGER, SMITH &  
MARCHANT, P.S.

  
Aaron J. Harris, WSBA #36802  
Attorneys for Appellants George N.  
Valison and Quail Lane Development,  
LLC

Dated: 5-27-14

23 DAVID BAKER and D BAKER  
24 CONSTRUCTION AND EXCAVATING

25 \_\_\_\_\_  
26 David G. Baker, *pro se*

Dated: \_\_\_\_\_

1 **L. SIGNATORIES AUTHORIZED**

2 The undersigned representatives for Ecology and Appellants certify that they are fully  
3 authorized by the party whom they represent to enter into the terms and conditions of this  
4 Agreement and to legally bind such party thereto.

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9 STATE OF WASHINGTON  
10 DEPARTMENT OF ECOLOGY

GEORGE N. VALISON  
QUAIL LANE DEVELOPMENT LLC

11 \_\_\_\_\_  
12 Gary Graff  
13 Regional Section Manager  
14 Shorelands and Environmental Assistance  
15 Central Regional Office

\_\_\_\_\_  
George N. Valison

14 Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

16 ROBERT W. FERGUSON  
17 Attorney General

JOHNSON, GAUKROGER, SMITH &  
MARCHANT, P.S.

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19 Christopher H. Reitz, WSBA #45566  
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21 Attorneys for Respondent  
22 360-586-6770

\_\_\_\_\_  
Aaron J. Harris, WSBA #36802  
Attorneys for Appellants George N.  
Valison and Quail Lane Development,  
LLC

21 Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

23 DAVID BAKER and D BAKER  
24 CONSTRUCTION AND EXCAVATING

25   
26 David G. Baker, pro se

Dated: May 23, 2014