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ENERGY FACILITY SITE  
EVALUATION COUNCIL

ENERGY FACILITY SITE  
EVALUATION COUNCIL

Docket No. 99-1

Received  
 Rejected

Exhibit No. 2

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 99-1  
SUMAS ENERGY 2, INC.  
SUMAS ENERGY 2 GENERATION  
FACILITY

NO.

DECLARATION OF CURT LEIGH IN  
SUPPORT OF SETTLEMENT  
AGREEMENT BETWEEN  
WASHINGTON DEPARTMENT OF  
FISH AND WILDLIFE AND SUMAS  
ENERGY 2

I, CURT LEIGH, declare as follows:

1. I am now and at all times mentioned a citizen of the United States and a resident of the state of Washington, over the age of 18 years, competent to make this declaration, and make this declaration from my own personal knowledge and judgment.

2. I am the lead Department staff person assigned to this case and I am assigned to the Major Projects Section of the Habitat Division. In the Major Projects section, I represent the Department in proceedings involving large scale developments or construction projects, including energy production facilities. My duties include identifying natural resources, describing development related impacts to those resources, and working with project sponsors to implement mitigation measures that will reduce those impacts and replace unavoidable losses to fish and wildlife and their habitat.

3. I have been involved with this proceeding since February, 1999, when Sumas Energy 2 (SE2) filed the original Application for Site Certification Agreement with EFSEC for this Project. I have reviewed the materials filed and/or supplied by SE2.

DECLARATION OF CURT LEIGH

ATTORNEY GENERAL OF WASHINGTON  
1125 Washington Street SE

PO Box 40100  
Olympia, WA 98504-0100  
(360) 753-6200

1           4.       Regarding the SE2 proposed Project, I am generally familiar with the site. I am  
2 also knowledgeable about the fish and wildlife resources and habitats that occur both at the site  
3 and in the general area of the proposed development. I visited the proposed SE2 project site on  
4 April 15, 1999. I understand the potential fish and wildlife impacts that are likely to occur if the  
5 Energy Facility Site Evaluation Council were to recommend a permit for the SE2 Project.

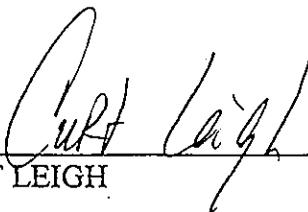
6           5.       With the assistance of counsel, I have met with representatives and consultants  
7 from SE2 on a number of occasions to: 1) discuss the fish and wildlife resources potentially  
8 subject to impacts; 2) discuss Project design changes or relocations which would avoid potential  
9 impacts; and 3) discuss alternative means to protect fish and wildlife resources and mitigate  
10 impacts likely to occur to those resources.

11          6.       Based on those discussions, the Department and SE2 have agreed to a number of  
12 action items that SE2 is willing to take to avoid unnecessary impacts, and to address remaining  
13 or potential impacts, in addition to the measures identified in the Application for Site  
14 Certification Agreement. Those commitments are contained in the Settlement Agreement  
15 Between Washington Department of Fish and Wildlife and Sumas Energy 2. The commitments  
16 resolve all of the impacts to fish and wildlife resources except identification of, and mitigation  
17 for, impacts to wetlands.

18          7.       The Department of Fish and Wildlife recommends that the Council adopt the  
19 Settlement Agreement between Washington Department of Fish and Wildlife and Sumas Energy  
20 2, in full.

21          8.       I will be unable to attend the Council's hearing on stipulation in this matter. I  
22 have created this declaration to be filed instead of my in person appearance to support the  
23 Settlement Agreement. I, on behalf of the Department of Fish and Wildlife, authorize Assistant  
24 Attorney General William C. Frymire to file this Declaration as a statement of the Department of  
25 Fish and Wildlife's official support for the Settlement Agreement.

1 DATED this 12 day of May, 2000.

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4 CURT LEIGH

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ENERGY FACILITY SITE  
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ENERGY FACILITY SITE  
EVALUATION COUNCIL

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

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In the Matter of Application No. 99-1:

SUMAS ENERGY 2 GENERATION  
FACILITY

SETTLEMENT AGREEMENT BETWEEN  
WASHINGTON DEPARTMENT OF FISH  
& WILDLIFE AND SUMAS ENERGY 2

**I. Introduction**

**A. Parties**

Sumas Energy 2, Inc. (SE2) is seeking a Site Certification Agreement (SCA) from the Energy Facility Site Evaluation Council (EFSEC) to construct and operate the proposed Sumas 2 Generation Facility (S2GF or Project).

Washington Department of Fish and Wildlife (WDFW) has a mandate to preserve, protect, manage, and perpetuate the state's fish and wildlife resources including habitat.

WDFW is a party to the site certification adjudication before EFSEC.

**B. Purpose and Intent**

SE2 and WDFW (collectively "the Parties") have been involved in discussions and negotiations related to the Project's potential effect upon fish and wildlife resources, including habitat. The Project consists of a 660 MW combined-cycle combustion turbine generation facility and associated facilities, including a 4.25-mile natural gas pipeline, and a 5.9-mile, 230 kV transmission line connection facility. Through this Agreement, WDFW and SE2 set forth

1 the obligations and restrictions that the Parties intend to have incorporated into the SCA as  
2 conditions for the Project should EFSEC recommend that the Project be certified. The  
3 obligations and restrictions set forth in this Agreement relate to resources that will be affected  
4 by construction and operation of the Project facilities at the Project site, and the construction  
5 and operation of the approximate 4.25-mile natural gas pipeline from the border crossing east  
6 of Sumas, Washington to the Project site, the construction and operation of the approximate  
7 5.9 mile electrical transmission line from the Project site to the Canadian electrical grid at  
8 British Columbia Hydro's Clayburn Station as these components are proposed at the time of  
9 entry of this Agreement. The Parties agree to amend this Agreement, as necessary, if the  
10 proposed project changes substantially from that proposed at the time of entry of this  
11 Agreement. The Agreement does not address issues that may be raised at EFSEC or non-  
12 EFSEC proceedings outside the adjudicative hearing or other Project impacts, if any.

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25 **C. Resolution of Issues**

26 SE2 has undertaken preliminary site impact assessments to identify the major  
27 significant impacts expected from construction and operation of the Project facility, gas  
28 pipeline, and electrical transmission line. The Parties agree that not all impacts may be known  
29 and therefore, the Agreement contains commitments to address currently expected specific  
30 impacts and a commitment to principles of impact assessment and mitigation for potential  
31 future unknown impacts.  
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38 The Parties further agree that SE2 will comply with any conditions in any settlement  
39 agreement with the Department of Ecology that set stricter standards regarding wetlands and  
40 water quality.  
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## II. SE2 Commitments

### A. Project Application

SE2 agrees that the applicable mitigation measures identified in the following sections of its S2GF Project Application, as revised, shall be incorporated into the amended SCA as binding commitments: section 1.4 (Mitigation Measures); section 2.10 (Surface Water Runoff); section 2.14 (Construction Methodology); and section 3.4 (Plants and Animals

### B. Natural Gas Pipeline and Electrical Transmission Line

The proposed project includes a 4.25-mile natural gas pipeline from the U.S./Canadian border east of Sumas, Washington to the S2GF site, and a 5.9 mile, 230 kV electrical transmission line from the S2GF site to BC Hydro's Clayburn Substation, approximately 0.5 miles of which is located in Washington State. SE2 shall apply the priority of mitigation principles (avoid, minimize, restore and replace, in that priority order) in its decisions and actions in planning, constructing, operating and maintaining the natural gas pipeline and the portion of the electrical transmission line, located in Washington State. To effectuate application of the principles, SE2 shall, prior to construction of the pipeline, create a detailed pipeline construction plan, which shall contain, at a minimum, the following wetland, riparian, and aquatic habitat protection standards. Prior to construction of the electrical transmission line, SE2 shall also create a detailed transmission line construction plan that shall contain, at a minimum, design features that prevent avian electrocution and collision in addition to the protection standards in subsections 1,2,3,4,7 & 8 of this Agreement. The parties agree that to the extent that one or more of the following standards or requirements cannot be met, SE2 and WDFW shall confer, and insofar as possible agree, on the appropriate standard or requirement to be used and amend the Agreement accordingly.

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**1. Construction Timing**

- a. As suggested in section 1.4 of the revised Application, all “out of the water” soil disturbing activities associated with wetland, stream, or river crossings shall occur during the dry portion of the year, typically late spring through early fall.
- b. Construction related activity that may be necessary within the wetted channel and/or within fifty feet of the bank shall be limited to the period of June 15 through October 15. This provision shall supersede any other or inconsistent dates provided elsewhere.

**2. Access, Staging, and Ancillary Areas**

- a. All equipment crossing a water body must use a construction bridge. Culvert crossings are not allowed.
- b. All equipment bridges shall be designed to pass the maximum flow and be maintained to prevent flow restrictions during the period that the equipment bridge is in place.
- c. The only access roads, other than the construction right of way, that may be used in wetlands are those existing roads that can be used with no modification and no impact on the wetland.
- d. Locate all staging areas, additional spoil storage areas, and other additional work areas at least 50 feet away from the ordinary high water mark or wetland boundary. In no event shall vegetation be cleared between these areas and the water body or wetland. Limit size to minimum needed to construct the wetland or water body crossing.

1 e. Refuel all construction equipment at least 100 feet from water bodies  
2 or wetland boundaries.  
3

4  
5 **3. Spoil Pile Placement and Control**  
6

7 a. The upper 12" of topsoil will be reserved, separated from subsoil, and  
8 returned to the trench as a final layer for planting.  
9

10 b. All spoil material from water body crossings must be placed in the right  
11 of way at least 50 feet away from the ordinary high water line. All spoil shall be contained  
12 within sediment filter devices  
13  
14  
15

16  
17 **4. General Construction Procedures/ Monitoring of Performance**  
18

19 a. Notify the WDFW at least 48 hours prior to commencement of pipe  
20 installation activities under each water body.  
21

22 b. In wetlands and riparian areas, limit the construction rights-of-way to  
23 50 feet or less.  
24  
25

26 c. In wetlands and riparian areas, vegetation that must be removed shall  
27 be cut at ground level, leaving existing root systems intact. Limit pulling of tree stumps and  
28 grading activities to those areas where root systems would directly interfere with trenching,  
29 pipe installation and backfill.  
30  
31  
32

33 d. If standing water or saturated soils are present, use low ground weight  
34 construction equipment and/or operate on prefabricated equipment mats.  
35  
36

37 e. Pre-construction wetland hydrology, which will be documented during  
38 pre-construction planning, will be maintained with the installation of impermeable plugs at the  
39 edge of the wetland, and in the pipeline trench, comprised of an impermeable material.  
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43 f. Silt fencing will be used to protect wetlands outside the construction  
44 corridor from sedimentation.  
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- 1 g. The affected wetland areas will be regraded to pre-project contours.  
 2  
 3 h. The flow of the existing ditches will be restored and maintained after  
 4  
 5 construction.  
 6  
 7 i. Disturbed areas will be revegetated with approved native vegetation, or  
 8  
 9 vegetation consistent with ongoing agricultural use, prior to the next wet season following  
 10  
 11 construction.  
 12  
 13 j. Emergent wetland areas will be reseeded or hydro-seeded with a mix of  
 14  
 15 native species, identified in section II.B.7, which will be selected after consultation with  
 16  
 17 WDFW prior to the next growing season.  
 18

19 **5. Specific Stream and River Crossing Methods<sup>1</sup>**

<u>STREAM NAME</u>	<u>METHOD</u>
Sumas Creek	Horizontal Directionally Drill
Johnson Creek	Horizontal Directionally Drill
Bone Creek	Horizontal Directionally Drill

29 **6. Hydrostatic Testing**

- 30 a. Perform 100 percent radiographic inspection of all section welds prior  
 31  
 32 to installation under water bodies or wetlands.  
 33  
 34 b. Screen the intake hose (3/32" perforations ) to prevent entrainment of  
 35  
 36 fish. The maximum approach velocity shall not exceed 0.4 feet/second.  
 37  
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42  
 43 <sup>1</sup>Subject to engineering feasibility and Army Corps of Engineer requirements. If SE2 determines it cannot  
 44 cross Sumas Creek, Johnson Creek, or Bone Creek by horizontal directional drilling, SE2 will inform WDFW of the  
 45 alternative crossing method. If after review of the alternative method, WDFW believes additional conditions are  
 46 necessary, SE2 and WDFW will amend this Agreement to add conditions related to the alternative crossing method.  
 47

1 c. At least thirty days prior to use, provide to EFSEC a list of specific  
2 locations proposed for withdrawal and discharge of hydrostatic test water and allow EFSEC  
3 to review and comment on the list in consultation with WDFW and WDOE.  
4  
5

6 d. Notify EFSEC, WDFW and WDOE of intent to begin using specific  
7 sources at least 48 hours prior to testing.  
8  
9

10 e. Maintain adequate flow rates at all times to protect aquatic life and  
11 provide for all other water body uses, including downstream withdrawals.  
12  
13

14 f. Hydrostatic test manifolds shall be located outside wetlands and  
15 riparian areas.  
16  
17

18 g. If a utility line is pressure tested using water or chlorinated water, and  
19 such water is to be discharged to waters of the State upon completion of the test, such  
20 discharge shall not cause an exceedance of State water quality standards.  
21  
22

23 g. Regulate discharge rate and use energy dissipation device(s) in order to  
24 prevent erosion of upland areas, stream bottom scour, suspension of sediments, or excessive  
25 stream flow.  
26  
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28  
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31 **7. Restoration, Stabilization, and Revegetation**  
32

33 a. Suggested native species that may be used for revegetation in the on-  
34 site constructed wetland include: Black cottonwood, Red alder, Salmonberry, Scouler  
35 willow, Pacific willow, Red-osier dogwood, Slough sedge, and Tall mannagrass.  
36  
37

38 b. Suggested native species that may be used for revegetation in the on-  
39 site enhanced wetland include: Black cottonwood, Red alder, Salmonberry, Scouler willow,  
40 Pacific willow, and Red-osier dogwood.  
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43 c. Suggested native species that may be used for revegetation in the on-  
44 site nonwetland buffer include: Western Hemlock, Western Red Cedar, Black cottonwood,  
45  
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1 Red alder, Vine maple, Wild Rose, Salmonberry, Scouler willow, Bearded fescue, Hair  
2  
3 Bentgrass, and Native Bluegrass (*Poa nervosa*).

4  
5 d. Suggested native species that may be used for revegetation in  
6  
7 emergent pasture wetlands include: Slough sedge, Beaked sedge, Spike bentgrass,  
8  
9 Bluejoint reedgrass, and Northern mannagrass.

10  
11 **8. Right-of-Way Maintenance Practices**

12  
13 a. Do not use herbicides or pesticides in or within 100 feet of a water  
14  
15 body unless such use has been approved by WDFW and WDOE as a means of preventing the  
16  
17 spread of undesirable exotic vegetation in conformance with B.8.d. below.

18  
19 b. SE2 shall not utilize vegetation maintenance practices for normal right  
20  
21 of way maintenance over the full width of the permanent right of way in wetlands and riparian  
22  
23 areas. To facilitate periodic pipeline surveys, however, a corridor centered on the pipeline up  
24  
25 to ten feet wide may be maintained in a herbaceous state. In addition, trees that are located  
26  
27 within fifteen feet of the pipeline and are greater than fifteen feet in height may be selectively  
28  
29 cut and removed from the right of way by SE2, using replacement criteria described in section  
30  
31 II.D.4, of this agreement.

32  
33 c. Monitor the success of revegetation annually, with written reports to  
34  
35 EFSEC and copies to WDFW and WDOE, for the first five years after construction.  
36  
37 Revegetation of wetland, riparian, and upland areas that are currently vegetated with native  
38  
39 species is considered successful if the native herbaceous and/or woody cover is at least eighty  
40  
41 percent of the total cover, and native species diversity is at least fifty percent of the diversity  
42  
43 originally planted in the area. If revegetation is not successful at the end of five years,  
44  
45 riparian and upland habitats will follow the replacement criteria found in section II.D of this  
46  
47

1 agreement. If wetland revegetation is not successful at the end of five years, the project  
2 sponsor shall develop and implement (in consultation with a professional wetland ecologist  
3 and the Departments of Ecology and Fish and Wildlife) a plan to actively revegetate the  
4 wetland with native wetland herbaceous and woody plant species  
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8  
9 d. Develop specific procedures to prevent the invasion or spread of  
10 undesirable exotic vegetation.  
11

12  
13 **C. Other Plans**

14  
15 1. SE2 agrees to develop the following plans and to consult with, and seek  
16 consensus with, WDFW during the development and review of the plans:  
17

18  
19 a. Environmental Protection Control Plan/Construction Management  
20 Plan(s) to include an independent environmental monitor with stop-work authority who  
21 reports to a state agency.  
22

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24  
25 b. Erosion and sediment control plan.

26  
27 c. Restoration of ROW plan including restoration and maintenance  
28 practices, schedules, monitoring methods, contingencies, and noxious weed control measures.  
29

30  
31 d. Construction water use and control plan.

32  
33 e. Right of Way Management Plan.

34  
35 f. Storm water control plan during construction.  
36

37 2. In addition, WDFW shall be provided with the following plans in accord with  
38 standard EFSEC procedures:  
39

40  
41 a. Petroleum and toxic material handling, storage, and spill response plan.  
42

43  
44 b. Long-term storm water control plan.  
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1 **D. Future Impact Assessment and Mitigation**

2  
3 The Parties agree that the principles of impact assessment that have been applied to  
4 the currently expected impacts and that shall be applied to all unforeseen impacts are, in  
5 descending order of importance, 1) avoid the impact wherever possible; 2) minimize the  
6 impact; 3) provide on-site, in-kind mitigation; and lastly, 4) provide off-site compensatory  
7 mitigation.  
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12 WDFW and SE2 agree that, to the extent impacts to fish and wildlife habitat cannot be  
13 avoided in the construction and operation of the Project, the impacts will be mitigated as  
14 follows:  
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18  
19 **1. Wetland Habitat Mitigation**

20 WDFW and SE2 agree that mitigation for impacts to wetlands, both on site and along  
21 the rights of way, are an important but currently unresolved issue. Resolution of this issue is  
22 expected to be the subject of a supplementary agreement.  
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27 **2. Upland Habitat Mitigation**

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29 **a. Shrub Habitat**

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31 (1) Shrub areas that are cleared for construction of the gas pipeline  
32 or the electrical transmission line will be restored to shrub habitat by SE2 following  
33 construction. For shrub areas that are cleared and that are not returned to shrub habitat,  
34 mitigation shall be by replacement of shrub habitat in selected locations that are controlled by  
35 SE2, or otherwise protected, (restoration or creation) in an amount equal to twice the  
36 unrestored shrub area. Successful planting of shrubs in formerly disturbed herbaceous sites  
37 (such as abandoned agricultural fields) shall qualify. It is understood by the parties that the  
38 gas pipeline and electric transmission line are being constructed in easements not on property  
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1 owned by SE2; therefore, SE2 will not have control of activities of the owner after SE2's  
2 restoration activities are implemented.  
3

4  
5 b. With respect to the electrical transmission line, trimmed  
6 material and tree trunks will be typically left on the ground in natural vegetated areas for  
7 habitat features. Footing construction areas are to be restored and revegetated according to  
8 pre-construction conditions.  
9

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13 **3. Herbaceous Habitat**

14  
15 a. Disturbance impacts to herbaceous habitat shall be mitigated by  
16 restoration of the disturbed areas using approved native species with safeguards against  
17 weedy invasive species.  
18

19  
20 b. In areas where the natural gas pipeline traverses cultivated agricultural  
21 areas, or areas occupied exclusively with grasses, the grass areas will be re-seeded, while  
22 areas planted in corn may be left as is.  
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29 **4. Forest Habitat**

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31 To replace trees that are removed from the rights of way due to construction or  
32 maintenance activities, standard size apple and crabapple, or other appropriate fruit producing  
33 trees, will be planted in selected locations that are controlled by the company, or otherwise  
34 protected. Those locations will be more that fifteen feet from the centerline of the pipe. Tree  
35 replacement will be at a ratio of three new trees for each tree removed.  
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43 **III. Withdrawal of Objections**

44  
45 Based upon the above commitments made by SE2, WDFW stipulates to the  
46 withdrawal of the issues addressed in this Stipulation from the adjudicative hearing. The  
47

1 parties agree that wetland impact, protection, mitigation, and enhancement issues are not  
2 resolved by this Stipulation and are not withdrawn by WDFW. WDFW specifically reserves  
3 the right to raise these issues in EFSEC and non-EFSEC proceedings outside the adjudicative  
4 hearing, and to raise other issues not addressed in this Stipulation in the adjudicatory hearing  
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9 DATED: May 12, 2000.

10  
11  
12 **PERKINS COIE LLP**

13  
14  
15 By Charles R. Blumenfeld  
16 Karen M. McGaffey  
17 Charles R. Blumenfeld  
18 Attorneys for Sumas Energy 2, Inc.  
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22

23  
24 **WASHINGTON ATTORNEY GENERAL**

25  
26 By William C. Frymire  
27 Mary McCrea  
28 William C. Frymire  
29 Assistant Attorney General  
30 Attorney for Washington Department of  
31 Fish and Wildlife  
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