



**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA REQUEST**

TO: Board of County Commissioners
Mark McCauley, Interim County Administrator

FROM: Pinky Mingo, Environmental Public Health Director
Tami Pokorny, Natural Resources Program Coordinator

DATE: January 18, 2022

SUBJECT: Agenda Item – North Olympic Salmon Coalition: Restoration at the Chimacum Confluence MOU; Upon Signature – December 1, 2022; \$25,600

STATEMENT OF ISSUE:

Jefferson County Public Health requests approval of the MOU with the North Olympic Salmon Coalition (NOSC) for the Restoration at the Chimacum Confluence; Upon Signature – December 1, 2022; \$25,600.

ANALYSIS/STRATEGIC GOALS/PRO'S and CON'S:

This MOU with the North Olympic Salmon Coalition (NOSC) will provide the means for Jefferson County to conduct due diligence as part of the Restoration at the Chimacum Confluence project, which involves a property located at the confluence of two forks of Chimacum Creek along Old Hadlock Road that is subject to liens as a result of litigation between the County and the landowner. Anticipated activities to be supported by this MOU include an appraisal, appraisal review, environmental site assessments, and salaries needed to facilitate a possible settlement between the County and the landowner that could make available a portion of the property for restoration and protection.

FISCAL IMPACT/COST BENEFIT ANALYSIS:

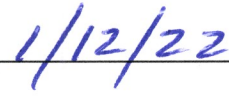
Funding for this project is provided by a pass through grant from NOSC. There is no match requirement.

RECOMMENDATION:

JCPH Management recommends BOCC signature for the MOU with the North Olympic Salmon Coalition for the Restoration at the Chimacum Confluence project; Upon Signature – December 1, 2022; \$25,600.

REVIEWED BY:


Mark McCauley, Interim County Administrator


Date

**AGREEMENT ON COOPERATION FOR RESTORATION AT
THE CHIMACUM CREEK CONFLUENCE**

Between
Jefferson County
and the
North Olympic Salmon Coalition

This Agreement on Cooperation for Restoration at the Chimacum Creek Confluence (this Agreement) is by and among the North Olympic Salmon Enhancement Group (NOSC), a 501c3 non-profit group, and Jefferson County (the County).

WHEREAS, NOSC and the County have collaborated since 2020 towards the restoration and protection of a property located at the confluence of the mainstem and East Fork of Chimacum Creek (confluence) to achieve multiple ecological and community benefits; and,

WHEREAS, acquisition of floodplain properties is necessary to the vision of reestablishing natural, self-sustaining fish and wildlife habitat and to recovering salmon in Chimacum Creek; and,

WHEREAS, property owned by Michael Anderson (landowner) on Old Hadlock Road (the property) abuts Chimacum Creek, at the confluence; and,

WHEREAS, the property and other property owned by the landowner is subject to liens, as a result of litigation between the County and the landowner and the County is considering a possible settlement with the landowner that would involve dedication of a portion of the property for restoration and protection at the confluence; and,

WHEREAS, information and data for due diligence is needed to facilitate the possible settlement that could make available a portion of the property (site) for such restoration and protection; and,

WHEREAS, this project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement PC-01J22301 through the Washington Department of Fish and Wildlife to acquire properties from willing landowners for the purpose of habitat restoration (**Attachment A**); and,

WHEREAS, the County may take fee simple title to a portion of the property or easement should an agreement with the landowner be reached; and,

WHEREAS, NOSC and the County will coordinate further on restoration efforts of the Chimacum Creek floodplain; and,

WHEREAS, NOSC and the County acknowledge the mutual benefit of partnering in order to make the best and most efficient use of grant resources.

NOW, THEREFORE, based on the mutual understanding made in this Agreement, the parties agree as follows:

1. **Effective Date.** The effective date of this Agreement is the date that the last party signs this Agreement.
2. **Project.** The Project is to obtain information and data for due diligence needed to facilitate a possible settlement between the County and the landowner that could make available a portion of the property for restoration and protection.
3. **Term of this Agreement.** This Agreement shall be in effect until **December 1, 2022**, unless extended in writing by both parties as an amendment to this Agreement.
4. **Cooperation.** NOSC and the County shall coordinate further on restoration efforts of the Chimacum Creek floodplain through the Project, as follows:

4.1. **The North Olympic Salmon Coalition** shall:

- 4.1.1. Provide the means to support due diligence efforts by Jefferson County for the project. It is the responsibility for the NOSC to provide the *means* for these actions, including appraisal, appraisal review, environmental site assessments costs, and salaries and benefits not to exceed \$25,600.
- 4.1.2. Retain and pay any contractors to provide the deliverables listed below and provide copies of them to the County as the client. Contractors shall use the Hazardous Substances Certification and checklist provided in the RCO Acquisitions Policies Manual procedures as a Phase I Assessment.
- 4.1.3. Deliverables will include unless otherwise noted:
 - 4.1.3.1. An appraisal;
 - 4.1.3.2. Appraisal review;
 - 4.1.3.3. Phase I Environmental Assessment;
 - 4.1.3.4. Phase II Environmental Assessment or other environmental data collection, if necessary;
- 4.1.4. The appraisal shall be performed in accordance with the “Uniform Appraisal Standards for Federal Land Acquisitions” by a state-certified general appraiser that complies with these standards (<https://www.justice.gov/file/408306/download>). A state-certified or licensed review appraiser will also conduct a review appraisal. Documentation will consist of parcel number identification and approval, a vicinity map and parcel map, and a self-contained appraisal with review appraisal.

4.2. **Jefferson County** shall:

4.2.1. As a condition of acquisition of the site, will provide certification that:

- 4.2.1.1. Any hazardous substances found have been remediated to the cleanup standards in WAC [173-340-360\(2\)](#); and,
- 4.2.1.2. Use reasonable efforts to settle with the landowner, in a manner that allows the site to be restored and protected; and,
- 4.2.1.3. Complete due diligence required for any acquisition of the site through a settlement agreement with the landowner. The parties agree that the completion of the documents required as the deliverables in Section 4.1.3 satisfy the due diligence process outlined in the Acquisition Procedures in Section 4 of the Recreation and Conservation Office (RCO) Acquisition Manual (Manual 3) (<https://rco.wa.gov/wp-content/uploads/2019/07/Manual3.pdf>).

5. **Estimated Timeline.** An estimated timeline for accomplishing the tasks associated with this Agreement and consistent with the applicable grant(s) is below.

December 2021	Agreement approved and signed by both parties
December 2021 – December 2022	• Appraisal • Appraisal Review • Phase I Environmental Site Assessment • Phase II Environmental Site Assessment

6. **Indemnity.** NOSC and the County shall indemnify, defend and hold harmless the other party, its party, its officers, officials, employees, agents and volunteers (and their marital communities), from and against any and all claims, losses or liability, or any portion thereof, including attorney's fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death of either party's own employees, or damage to property occasioned by a negligent act, omission or failure related to the project.

7. **Grant Funding Withdrawn, Reduced or Limited.** If NOSC determines in its sole discretion that the funds it relied upon to establish this Agreement have been withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding after the effective date of this Agreement but prior to the normal completion of this Agreement, then the NOSC, in its sole discretion, may: (1) Terminate this agreement; (2) Renegotiate this Agreement under the revised funding conditions; or, (3) Suspend performance under this Agreement upon five (5) business days' advance notice to the County, if NOSC determines that there is a reasonably likelihood that the funding insufficiency may be

resolved in time to allow NOSC's performance to resume prior to end of the term of this Agreement.

8. **Termination.** Either NOSC or the County may terminate this Agreement upon thirty (30) days written notice to the other party.

9. **General Terms.**

- 9.1. Nothing in this Agreement implies an obligation for NOSC to provide the *means* to support a grant other than the project discussed in Section 2.

- 9.2. Notices:

Notices to NOSC shall be sent to the following addresses:

Rebecca Benjamin, Executive Director
North Olympic Salmon Coalition
PO Box 197
Port Townsend, WA 98368
Cell: (360) 302-1447
Office: (360) 379-8051
Email: sdoyle@nosc.org

Notices to the County shall be sent to the following address:

Tami Pokorny, Natural Resources Program Coordinator
Jefferson County Public Health
615 Sheridan Street
Port Townsend, WA 98368
Ph: 360/379-4498
Email: tpokorny@co.jefferson.wa.us

- 9.3. Each party to this Agreement, and each individual signing on behalf of each party hereby represents and warrants to the other that it has full power and authority to enter this Agreement and that its executive, delivery and performance of this Agreement has been fully authorized and approved and that no further approvals or consents are required to bind such party.
- 9.4. It is understood and agreed that this Agreement is entered into in the State of Washington. This Agreement shall be governed by and construed in accordance with the laws of the United States, the State of Washington and the County of Jefferson, as if applied to transactions entered into and to be performed wholly within Jefferson County, Washington between Jefferson County residents. No party shall argue or assert that any state law other than Washington law applies to the governance or construction of this Agreement.
- 9.5. Should either party bring any legal action, each party in such action shall bear the cost of its own attorney's fees and court costs. The venue for any legal action shall

be solely in the appropriate state court in Jefferson County, Washington, subject to the venue provisions for actions against counties in RCW 36.01.050.

- 9.6. This Agreement memorializes the entire agreement of the parties and all parts of this Agreement are contained in this Agreement. The parties agree that: No representation or promise not expressly contained in this Agreement has been made; they are not entering into this Agreement based on any inducement, promise or representation, expressed or implied, which is not expressly contained in this Agreement; and, this Agreement supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral, within the scope of this Agreement.
- 9.7. No consent by either party to, or waiver of, a breach by either party, whether express or implied, shall constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.
- 9.8. No term or provision of this Agreement will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. Failure of a party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.
- 9.9. The terms of this Agreement are not severable. If any provision of this Agreement or the application of this Agreement to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application this Agreement shall not be enforceable.
- 9.10. This Agreement shall be binding upon and inure to the benefit of the parties' successors in interest, heirs and assigns.
- 9.11. The parties do not intend, and nothing in this Agreement shall be construed to mean, that any provision in this Agreement is for the benefit of any person or entity who is not a party.
- 9.12. This Agreement may be amended or supplemented only by a writing that is signed by duly authorized representatives of all the parties.
- 9.13. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the parties shall not affect the validity of this Agreement, so long as all the parties execute a counterpart of this Agreement.
- 9.14. The parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

DATED this 17th day of December, 2021

North Olympic Salmon Coalition

By: RL Benjamin
Rebecca Benjamin
Executive Director

Jefferson County

By _____
, Chair
Jefferson Board of County Commissioners

Attest/Authenticated:

By: _____
Carolyn Gallaway, Date
Deputy Clerk of the Board

APPROVED AS TO FORM

By: P.C. Hunsucker December 9, 2021
Philip C. Hunsucker, Date
Chief Civil DPA