

MEMORANDUM OF UNDERSTANDING
BETWEEN THE STILLAGUAMISH TRIBE AND
THE CITY OF STANWOOD FOR
COORDINATED WATERSHED IMPROVEMENTS

This Memorandum of Understanding (“MOU”) is entered into as of May 1, 2013 by and between the City of Stanwood (the “City”) and Stillaguamish Tribe (the “Tribe”).

RECITALS

- A. As government entities, the Tribe and the City (“Parties”) have a common responsibility within the Stillaguamish Watershed to protect and enhance habitat for Chinook salmon and other species listed as threatened or endangered under the Endangered Species Act (ESA).
- B. One of the primary missions of the Stillaguamish Tribe is to manage, protect, and conserve those natural resources that are required to sustain healthy populations of fish, shellfish, and wildlife within the Stillaguamish Watershed.
- C. The City of Stanwood has an additional responsibility to meet the goals of Vision 2040 and to protect and provide urban levels of service within its corporate limits under the Growth Management Act (GMA).
- D. The Tribe and the City have approved the Stillaguamish Salmon Recovery Plan. The Recovery Plan is intended to provide guidance to local stakeholders in a collaborative effort to restore and protect Chinook salmon populations in the Stillaguamish River watershed.
- E. The Recovery Plan recommends habitat projects to restore watershed processes that affect Chinook salmon populations, protection of existing habitat through regulatory and nonregulatory strategies, stewardship education and outreach, and a monitoring and adaptive management plan.
- F. Stanwood’s location at the confluence of Stillaguamish River, Port Susan Bay and Skagit Bay is adjacent to habitat restoration sites identified in the Stillaguamish Salmon Recovery Plan and supported by the Stillaguamish Watershed Council.
- G. The Salmon Recovery Plan recommends informing adjacent property owners and other stakeholders during feasibility and design phases to ensure broad-based community support and appropriate project design.
- H. The City of Stanwood and the Stillaguamish Tribe are seeking to work together as government entities, co-partners, and adjacent property owners to meet their shared and individual responsibilities under the Growth Management Act and Endangered Species Act.

FINDINGS

- A. The Stillaguamish Tribe has identified areas for estuary habitat enhancement that encompass the Stillaguamish floodplain, Port Susan Bay and Skagit Bay.
- B. The Stillaguamish Tribe has purchased land commonly known as the “Matterand Property” with the intent of removing the levees that protect the land from salt water inundation in order to restore the land to estuary habitat. The Matterand property is adjacent to the city limits of Stanwood.
- B. Computer modeling of the proposed project indicate removing the levees protecting the Matterand Property could result in increased siltation and reduced function at two locations where the city’s stormwater is discharged into the Stillaguamish river.
- C. The Stillaguamish Tribe is seeking funding from the Washington State legislature and other public sources to perform additional studies to determine the potential impacts of removing the levees around the Matterand property.
- D. The City of Stanwood has identified capital improvements adjacent to the Matterand property including property acquisition, stormwater management, passive recreation facilities, habitat restoration and flood protection.
- E. There is an opportunity for the City and the Tribe to partner together and jointly review scientific data, studies, and public input in support or opposition of proposed capital investments to meet the goals of the City and the Tribe.

AGREEMENT

1. The Obligations of Tribe and the City.

- 1.1 Obligations. In order to ensure participation and input on proposed projects with the potential to impact the City and/ or the Tribe, the Parties shall:
- 1.1.1 Meet early in the environmental review process in order to establish an initial agreement regarding the process for the government-to-government consultations.
- 1.1.2 Engage in both formal and technical consultation concerning applicable issues (e.g., modeling, scientific reports, etc.).
- 1.1.3 Invite representatives to all working group meetings.
- 1.1.4 Meet with elected and appointment officials and appropriate committees at major project milestones.

- 1.1.5 Keep representatives informed throughout the project planning, permitting and development process. In acknowledgement that the Parties must afford each other with more than the opportunity to participate as members of the general public in the planning and permitting process, the Parties will take the following actions to ensure there is effective government-to-government consultation:
 - 1.1.5.1 Seek input regarding alternatives and opportunities to avoid, reduce, or otherwise mitigate the effects of the project on city interests.
 - 1.1.5.2 Seek comment throughout the project's environmental review, permitting and regulatory review processes.
 - 1.1.5.3 Give positive consideration to comments received throughout the permitting, regulatory, planning, and design processes of the project.
 - 1.1.6 Engage in an open exchange of information about the project, its potential impacts, and appropriate mitigation.
 - 1.1.7 Resolve effects projects may have on either Parties' responsibilities under the GMA and ESA.
 - 1.1.8 Reach a full and fair settlement on any related issues in a manner that is compatible with the mutual interests of the City, the Tribe, and the objectives of the project.
 - 1.1.9 Work to secure additional revenues to support planned and proposed capital investments.
2. Purpose and Effect of the Memorandum of Understanding. The purpose of this MOU is to document certain understandings reached by the Tribe and the City. The Tribe and the City acknowledge that additional binding documents (plans, funding, resolutions, etc.) may be necessary to implement some terms of this MOU, and that such additional documents will be subject to substantive review and approval by the Tribe and the City. Nevertheless, both parties intend that this MOU create obligations that each party agree to undertake.
 3. Term. This Memorandum of Understanding shall continue until either party gives written notice sixty (60) days prior to the anniversary of the effective date.
 4. Not Entire Agreement. The Parties hereto have endeavored in this MOU to set forth their understanding and intent with respect to the matters addressed herein. This MOU is not, however, intended to set forth in full detail the terms and conditions under which the parties are to proceed in regard to maintaining and repairing sea gates, levies and other flood control structures within the Tribe's boundaries.

5. Notices. Any notices to be delivered on matters pertaining to this MOU shall be addressed as follows:

If to the Tribe

Chairman, Stillaguamish Tribe
3310 Smokey Point Drive
Arlington, WA 98223

If to the City:

Mayor, City of Stanwood
10220 – 270th Street
Stanwood, Wa 98292

6. Amendment to the MOU. This MOU may be amended only by a written instrument signed by the parties. The party proposing the amendment shall bear all costs of amendments to this MOU.
7. Waiver. The waiver by either party of a breach by the other of any provisions of this MOU shall not constitute a continuing waiver of any subsequent break of either the same or a different provision of this MOU.
8. Attorney's Fees. In the event any legal action is brought to enforce or interpret this MOU, the prevailing party shall be entitled to an award of reasonable fees, in addition to any other relief to which it may be entitled. Venue for any such action will be in Snohomish County.
9. Severability. The provisions of this MOU are severable. If any portion of this MOU is held invalid by a court of competent jurisdiction, the remainder of the MOU shall remain in full force and effect unless amended or modified by mutual written consent of the parties.
10. Dispute Resolution. In the event any dispute, disagreement, claim or controversy arises between the Parties concerning this Agreement or any of the provisions hereof (each, a "Disputed Matter"), Representatives from each party will meet and attempt to resolve the Disputed Matter through negotiations. If the representatives are unable to reach agreement, the Disputed Matter shall be referred jointly to the Mayor and the Tribal Chairman. If such individuals are unable to resolve the Disputed Matter within ten (10) days, then either the City or Tribe may, upon written notice, submit the matter to mediation.

Either party may commence mediation by providing to the other party a written request for mediation, setting forth the subject of the Disputed Matter and the relief requested. The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. The parties each covenant that they will participate in the mediation in good faith, and that they will

share equally in the costs of such mediation. Neither party may commence a civil action with respect to any Disputed Matter submitted to mediation until after the completion of the initial mediation session or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

Executed as of the date first written above.

THE CITY OF STANWOOD, a Washington municipal corporation

By: _____ Date: _____

Mayor Dianne White

Its:

Stillaguamish Tribe, a Native Sovereign Nation

By: _____ Date: _____

Chairman Shawn Yanity

Its:

