

Interlocal Agreement between
Clallam County
and the
City of Forks

Regarding Shoreline Management Plan Permits within City limits

THIS IS AN INTERLOCAL AGREEMENT, entered into under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, between Clallam County and the City of Forks (herein after "the parties").

RECITALS

WHEREAS, the City Council of the City of Forks, herein after "the City," adopted City Resolution No. 398 on 9 Aug 2010 indicating the City's intent to adopt as its own the Clallam County Shoreline Management Program Update (County SMP) underway at that time;

WHEREAS, said resolution also adopted a public participation plan for this effort and these were shared with Clallam County, herein after "the County," and particularly the County's Department of Community Development, herein after "County DCD;"

WHEREAS, the City had adopted the previous County SMP by reference as part of its critical areas ordinance and had utilized the County SMP process for the small number of SMP required permits since the early 1990s;

WHEREAS, the City's shoreline jurisdiction is limited to approximately 2.5 linear miles of "shorelines of the state" along portions of the Calawah River and a very small portion of Mill Creek lying west of Russell Road within City limits, with only a small number of parcels affected. Shorelines located in the Forks Urban Growth Area remain under County SMP jurisdiction until annexation occurs;

WHEREAS, this Shoreline Master Program (SMP) amendment is intended to satisfy the statutory requirements of RCW 90.58.080(2)(a)(iii) to comprehensively update the City's SMP and the statutory requirements of RCW 90.58.080(4)(b)(ii) to take action to review, and revise if necessary, the City's SMP;

WHEREAS, the City believes that with a lack of property owners seeking permits over the last three decades, and the County having adopted an SMP that would provide consistency and continuity along designated shorelines, seeking the County to

administer what few permits might arise in the City would be prudent and appropriate;

WHEREAS, Clallam County finalized its adoption of the County SMP following its response to Ecology's March 2021 required and recommended changes;

WHEREAS, the City adopted Ordinance No. 626 formally adopting as the City's SMP the County SMP with the expectation that the County SMP administrative process would apply to the City related SMP permits;

WHEREAS, an agreement between the parties as to how any such future permits would be administered by the County regarding those properties and projects within the City would ensure clarity for all involved;

WHEREAS, it is within the capacity of the County DCD to administer all City shoreline permit applications, including letters of exemption, with fees paid to the County DCD according to the County's fee schedule in-effect at permit submittal;

WHEREAS, SMP enforcement responsibilities and hearings related to code enforcement cases may be administered within the existing processes and staffing of the County;

WHEREAS, if approved administratively, shoreline permit appeals will be handled by the County Hearing Examiner with an appeal of the Hearing Examiner's decision to the Shoreline Hearings Board;

NOW, THEREFORE, the Parties enter into this agreement in consideration of the mutual benefits, terms, and conditions hereinafter specified.

Section 1. **Adoption of Recitals.** The recitals set forth above are hereby adopted as the factual basis for this Agreement and may be relied upon by the parties in the interpretation of the agreement's purpose and objectives.

Section 2. **Purpose.** The City and County enter into this agreement to clarify the manner in which projects and enforcement of the County SMP within the City of Forks will occur by Clallam County. Further, the parties are agreeing to the roles and responsibilities of each of them as discussed herein to effectuate the SMP.

Section 3. **Administrative Structure.**

- A. **County Code, Rules, Process Sole Authority.** County Application and Permitting Structure to be Used. The parties agree that any SMP application for a SMP permit shall be administered by the County. As

such the County's application, permitting, and appeal structure shall be the sole controlling local code applicable to any submitted SMP permit by a landowner having property in the City of Forks subject to the SMP (hereinafter City landowner).

Any amendments or modifications to the adopted County SMP will be considered adopted and applicable to any City landowner's development.

All fees associated with the County's SMP permitting process shall be paid by the applicant to the County at the rate established by the County for such permits.

B. Role of the City Planner

The City Planner is authorized to assist in the coordination and facilitation of a City landowner's pursuit of a development permit associated with a project for which approval under the County SMP and associated rules and regulations would be required.

However, the City Planner's assistance is not to be construed or interpreted as legal or regulatory representation of the City landowner. The sole purpose of the City Planner's assistance is to help reduce any burden the City landowner's application may have on the County staff, while also, reducing the challenges that might arise due to distance. The City Planner may make suggestions or recommendations to the County staff to facilitate the permitting process. Such suggestions or recommendations shall be considered or construed by the County staff in the manner appropriate for the circumstance.

- C. The parties agree that the City would be the responsible party for any accounting, defense or explanation to the State or others regarding the issue of "no-net loss" of shoreline function.
- D. The City is responsible for all critical areas review, utilizing Forks Municipal Code Title 14 Environment, as well as acting as lead State Environmental Policy Act (SEPA) agency, in-coordination with County shoreline permit review and notice of application, as applicable.

Section 4. Term. This agreement shall become effective on the date it is recorded with the Clallam County Auditor. It shall remain in effect until such time as either party terminates the agreement, or the City adopts its own SMP regulatory processes.

Section 5. Termination. If the County seeks to terminate its participation in this Agreement it will notify the City parties in writing at least one year prior to termination. The basis for such a period is that the City would be required to develop its own regulatory process in consultation with the Ecology.

Section 6. **SMP Review and Agreement.** As required by statute, the parties will be required to undertake periodic reviews of the SMP. The parties agree that they will meet at a time reasonable prior to or at least at the start of that periodic review process that occurs after 2022. The purpose of these meetings is to understand issues or concerns requiring further action to comport the parties with the applicable statutory, regulatory, or advisory aspects of the State's SMA.

Section 7. **Dispute Resolution.** Any dispute between the Parties regarding the delivery of services under this Agreement or any other controversy or claim arising out of or relating to this Agreement or the alleged breach of such Agreement which cannot be resolved through good faith discussions by county and city officials, shall be submitted to mediation prior to any formal legal action being filed in a court of law. Mediation shall be with a qualified mediator agreed upon by both parties. If the dispute is not resolved through mediation, any legal action shall be brought in the Superior Court of Washington in and for Clallam County.

Section 8. **Parties Independent of Each Other.** *The Parties are and shall at all times be deemed to be independent contractors in the provision of the services set forth in this Agreement.* Nothing herein shall be construed as creating the relationship of employer and employee, or principal or agent, between the Parties. Each Party shall retain all authority for provision of services, standards of performance, discipline and control of personnel, and other matters incident to its performance of services pursuant to this Agreement. Nothing in this Agreement shall make any employee of any Party an employee of any other Party for any purpose, including but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded their respective employees by virtue of their employment.

Section 9. **Hold Harmless/Indemnification.** It is understood and agreed that each Party will be responsible for its own negligence and will, to the extent of its negligence, indemnify and hold harmless the other Parties from any and all claims, losses or causes of action, suits and actions in equity of any kind.

Section 10. **Attorneys Fees and Costs.** All Parties shall bear their own attorneys' fees and costs enforcing the rights and responsibilities under the Agreement.

Section 11. **Assignment/Subcontracting.** No Party shall transfer, assign, or subcontract, in whole or in part, any or all of its respective rights or obligations under this Agreement without prior written consent of the other Parties. For the purpose of SMP appeals, it is understood that any Hearing Examiner contracted by the County shall be considered preapproved by the parties.

Section 121. **No Third Party Beneficiary.** The Parties do not intend by this Agreement to assume any contractual obligations to anyone other than each other. The Parties do not intend there by any third-party beneficiary to this Agreement.

Section 132. **Notices.** Any notices to be given under this Agreement shall at a minimum be delivered, postage prepaid and addressed to:

CLALLAM COUNTY
223 East 4th Street
Port Angeles, Washington 98352
Attention: Bruce Emery, Director DCD

CITY OF FORKS
500 East Division Street
Forks, Washington 98331
Attention: Rod Fleck

The name and address to which notices shall be directed may be changed by any Party giving the other Parties notice of such change as provided in this section.

Section 14. **Waiver.** No waiver by any Party of any term or condition of this Agreement incorporated in this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision.

Section 15. **Interlocal Cooperation Act Compliance.** This is an Agreement entered into pursuant to Chapter 39.34 RCW. Its purpose is as set forth in Section 2. Its duration is as specified in Section 3 (Term). Its method of termination is set forth in Section 4. No real or personal property shall be acquired pursuant to this Agreement that will need to be disposed of upon partial or complete termination of this Agreement.

Section 16. **Entire Agreement.** This Agreement contains all of the agreements of the parties with respect to the subject matter covered or mentioned therein, and no prior Agreements shall be effective to the contrary.

Section 17. **Amendment.** The provisions of this Agreement may be amended with the mutual consent of the Parties. No Additions to, or alternations of, the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized agents of the parties.

Section 18. **Counterparts.** This Interlocal Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

Section 19. Document Execution and Filing. Parties agree that there shall be four duplicate originals of this Agreement prepared and distributed for signature by the necessary officials of each Party. Each Party who executes this Agreement shall cause receive one of the executed originals. One executed original shall be filed by the County with the County Auditor. The City shall also post a copy of the executed agreement on their respective websites pursuant to said RCW. Upon filing with the County Auditor of a fully executed original, and posting of a copy of that document on the County's website, such signed original shall constitute an Agreement binding upon the parties.

Section 20. Ratification. Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.

Section 21. Severability. If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed in its respective name by its duly authorized officers and has caused this Agreement to be dated as of the date indicated below.

So executed this 23 day of may, 2023.

Board of County Commissioners
Clallam County, Washington

City of Forks



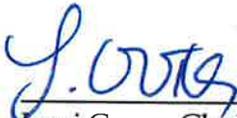


Randy Johnson, Vice Chair

Tim Fletcher, Mayor

Attest:

Attested to and Authenticated by:





Loni Gores, Clerk of the Board

Carolyn DePew
Clerk/Treasurer

Approved as to Form:

Approved as to Form:





Dee Boughton, Chief Civil Deputy

William R. Fleck, Attorney/Planner

