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DEPARTMENT OF
ECOLOGY
State of Washington

Ecology Grant Agreement No. G1400671

between the

State of Washington Department of ECOLOGY and

CLALLAM COUNTY

Project: Final Engineering for the Lower Dungeness River Setback Levee

THIS is a binding agreement entered into by and between the state of Washington, Department of ECOLOGY, (PO Box 47600, Olympia, Washington, 98504-7600) hereinafter referred to as "ECOLOGY" or the "DEPARTMENT" and Clallam County, hereinafter referred to as the "RECIPIENT" to carry out the activities described herein.

RECIPIENT Name:	**Clallam County** Department of Community Development 223 East Fourth Street, Suite 5 Port Angeles, WA 98362-3000
RECIPIENT Project Manager:	**Cathy Lear**
Telephone Number:	(360) 417-2361
e-mail address:	clear@co.clallam.wa.us
Fiscal Contact for RECIPIENT:	**Lori Kennedy**
Telephone Number:	360-417-2354
e-mail address:	lkennedy@co.clallam.wa.us
Payee on Warrant:	**Clallam County** Address as above
Project Manager for ECOLOGY:	**Adam Sant** SEA Program WA State Department of Ecology PO Box 47600 Olympia, WA 98504-7600
Telephone Number:	(360) 407-7675
e-mail address:	adsa461@ecy.wa.gov

The source of funds provided by the DEPARTMENT are authorized by the 2013 Washington State Legislature, §3069 of the Capital Budget.

Maximum State Floodplain Restoration Proviso Funding: 100% UP TO $1,519,014.
The start date of this agreement is July 1, 2013; the end date is June 30, 2017.

Scope of Work

Project: **Final Engineering for the Lower Dungeness River Setback Levee**

Description:

This ongoing, large-scale floodplain restoration effort involves final engineering design, and permitting for an 0.8 mile setback of the "middle" segment of the Army Corps of Engineer (ACOE)1960 levee (see Exhibits 1 and 2). This phase also involves land acquisition for right-of-way easement(s) for levee access and maintenance; public access; the removal or relocation of associated infrastructure; the possible removal of sediment; and restoration of riparian planting within floodplains along the lower Dungeness River.

The levee has disconnected the river from its historic floodplain, disrupting river processes, degrading habitat and increasing flood risk. At this time, flood waters cannot dissipate and sediment cannot be stored in the floodplain.

A feasibility study by the Army Corps on this levee is currently underway, with an anticipated completion date in late summer/fall of 2014. The need for relocating this levee has already been documented in several previous studies. The current ACOE study examines various levee setback locations.

Based on the ACOE findings in the feasibility study, final engineering plans for the levee setback will be developed which will reconnect this section of the river to its historic floodplain; provide engineering for future construction of a side channel; abate river constriction for restored floodplain function; determine whether any removal of sediment will be needed; develop a revegetation plan to encourage the growth of a riparian forest to help ensure natural process and function into the future for riverine, floodplain, fish and wildlife improvements.

Task 1: Project Oversight

a. The RECIPIENT will provide <u>project coordination</u> to ensure effective communication on this project with all interested parties including the DEPARTMENT, the US Army Corps of Engineers, all affected local, state, federal agencies, tribal nations, local land owners, irrigation districts and other applicable stakeholders. In addition, the RECIPIENT should consult with all other appropriate entities that may have useful scientific, technical, or cultural information that will augment this project. Coordination issues include, but are not limited to, riverine functions, flood plain management, habitat and fish protection and restoration, public access and recreation, cultural and archaeological resources, etc.

b. The RECIPIENT is responsible for conducting <u>project management</u> activities to include project scheduling, assuring quality control, adherence to the scope of work, time lines, due dates; and as applicable, compliance with deed restrictions on acquisitions. and compliance with all required permits, licenses, easements, or property rights necessary for the project.

c. The RECIPIENT will provide <u>project administration</u> including bookkeeping and accounting services; submittal of quarterly progress reports and reimbursement

requests with corresponding supporting documentation; maintenance of project records, submittal and compliance of deliverables on established due dates.

Deliverables:

1. Updates in progress reports and reimbursement requests: **due:** Quarterly.
2. Copies of agreements for contracted services; **due:** prior to commencement of work.

Task 2: Obtain Consultant Services

The RECIPEINT will conduct the competitive procurement process in accordance with RECIPIENT's established procurement process including preparation of bidding documents, advertisement; contract award and contract monitoring for services needed to perform the scope of this work.

All consultants/contractors will be licensed and bonded in the State of Washington. The RECIPIENT will enter into agreements with the selected contractors/consultants and prepare agreements and budgets in accordance with the scope of work in this agreement.

Deliverables:

1. Copies of agreements for contracted services and interlocal agreements, **due:** prior to commencement of work.

Task 3: Right of Way (ROW) Property Acquisition

The RECIPIENT will ensure that the necessary easement(s) required to construct the project are obtained. All properties acquired with State funds will be used in perpetuity to enhance the levee system, provide emergency access to the levee, or for open space purposes only (such as parks, nature preserves, grazing, unimproved porous parking and passive recreation). These restrictions from future development will be placed on the deed and recorded on the title.

For each property acquired, the RECIPIENT will provide an Acquisitions Report to include:

1. Log of hours spent negotiating with landowners and other project partners to finalize property acquisitions, preparing paperwork and other work needed to successfully complete acquisition(s);
2. Legal description;
3. Plat plan or survey showing location of specific property;
4. Title report;
5. Appraisals and review appraisals to establish fair market cost;
6. Environmental Assessment / Clean Site Certification;
7. Offer letter (Notice of Just Compensation);
8. Conduct of real estate closing activities;
9. Status of Property Acquisitions Report for the Lower Dungeness River Restoration Project (ref: Exhibit 3);
10. Recorded deed *with* open space restrictions in perpetuity; and

11. Digital photographic documentation of each property after project implementation in sufficient quantity / quality to effectively illustrate the acquisition. Each image will be labeled as to location and what features it represents.

Deliverables:

One electronic and one hard copy of the following:

1. Acquisition Report for each property purchased; **due:** upon completion of each acquisition.
2. Updated *Exhibit 3: Priority Sites for Acquisition, Restoration & Revegetation;* **due:** with Quarterly Progress Report.

Task 4: Project Engineering

The RECIPIENT will provide engineering design and support services for development of 30 percent, 60 percent, and final design plan sets with specifications (specifications included with the 60 percent and final plans) for the Lower Dungeness River Setback Levee. All final plans are to be signed and sealed/stamped by an engineer licensed in the State of Washington. All final plans and specifications are to be bid-ready.

Plans will include cost estimates, mobilization/demobilization, all site-specific conservation measures including minimizing impacts to fish and wildlife.

All engineering services will be coordinated with the ACOE. Engineered setback levee plans will be submitted to ACOE for formal review.

Engineering will include plans for:

1. Setback Levee Design
2. Side Channel Design
3. Placement of Large Woody Debris

Deliverables:

a. 30 percent engineered setback levee design; **Due:** December 31, 2015. 60 percent engineered setback levee design and specifications; **Due:** June 30, 2016. 100 percent engineered signed and sealed/stamped construction/bid- ready drawings and specifications for project elements; **Due:** June 30, 2017.
b. Probable Costs Estimates; **Due:** June 30, 2017.

Task 5: Project Permitting

The RECIPIENT will acquire all permits necessary for construction of the Lower Dungeness Setback Levee including application for, receipt of, and compliance with all required permits.

This permit table will be updated and submitted with Quarterly Progress Reports as applicable. Permits are to include but are not limited to those listed in the matrix below:

Permit*	Issuing Agency	Effective WORK Dates	
		Start	End
SEPA / NEPA	County	TBD	TBD
Army Corp 404	US -COE	TBD	TBD
Hydraulic Project Approval (HPA)	WS DF&W	TBD	TBD
Section 106 Cultural Resources	US-COE	TBD	TBD
Federal Consistency / 401	WS Ecology	TBD	TBD
Biological Assessment	FEMA	TBD	TBD
Grade/Fill	County	TBD	TBD
Temporary Traffic Diversion	County	TBD	TBD
Flood Plain Development Permit includes a Zero Rise Analysis	County	TBD	TBD
Shoreline Substantial Development Permit	County	TBD	TBD
NPDES Construction Stormwater Permit	WS Ecology	TBD	TBD
Consistency:			
Critical Areas Ordinance Consistency (if applicable)	County	TBD	TBD
ESA	US-NMFS	TBD	TBD
State Aquatic Lands Lease	DNR	TBD	TBD
Other		TBD	TBD

* Permit application submittals for the setback levee are dependent on the Army Corps of Engineers completion of the feasibility study due Fall of 2014.

Deliverables:

1. Updated Permit Table; **due:** with Quarterly Progress Reports.
2. Copies all required permits; **due:** prior to construction or implementation.

Task 6: Floodplain Restoration Site Work

The RECIPIENT, in coordination with the Jamestown S'Klallam Tribe as lead, will develop both a planting and monitoring plan to implement riparian restoration activities on select areas within the Lower Dungeness floodplain. This work will enhance both the floodplain and riparian areas to provide shade for improved water temperature of fish habitat and wildlife habitat as appropriate. Methods, materials, and species for vegetation used will be consistent with specific needs of designated areas of this project.

Deliverables:

a. Site map depicting areas for RECIPIENT floodplain restoration site work;
b. Planting plan;
c. Monitoring plan;
d. Update in progress reports to include digital photographic documentation before, during and after planting in sufficient quantity to effectively illustrate important phases of plant viability. Each image will be labeled as to location and what features it represents. One hard copy set and one digital copy set.

Date Due: Quarterly as seasonally appropriate.

SCHEDULE

Schedule: Lower Dungeness River Floodplain Restoration - CLALLAM COUNTY

		Fiscal Year 2014												Fiscal Year 2015												Fiscal Year 2016												Fisccal Year 2017											
	Calendar Year	2013						2014						2014						2015						2015						2016						2016						2017					
Task	Description	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
1	Project Oversight	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
2	Obtain Consultant Services																					X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
3	Right-of-Way Property Acquisition																									X	X	X	X	X	X	X	X	X	X	X	X												
4	Project Engineering																									X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
5	Project Permitting																															X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
6	Floodplain Restoration Site Work																X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

BUDGET

Budget Conditions

1. Prior to the initiation of construction work, the RECIPIENT must obtain all applicable permits. In addition, failure to comply with required permits constitutes a breach of contract, which may result in termination of this agreement.

2. **Project Administration:**

   For the administration of this agreement the RECIPIENT must follow the current edition of the *Administrative Requirements for RECIPIENTs of ECOLOGY Grants and Loans* (Yellow Book). http://www.ecy.wa.gov/biblio/9118.html.
   Please note that this document is being updated. In the event of inconsistency between these documents, unless otherwise provided herein, the inconsistency will be resolved by giving precedence in the following order:

   a) Applicable Federal and State statutes and regulations.
   b) Scope of Work.
   c) Special Terms and Conditions.
   d) Any terms incorporated herein by reference including the "Administrative Requirements for RECIPIENTs of ECOLOGY Grants and Loans."
   e) The General Terms and Conditions.

3. **Invoicing:**

   - Grants are awarded on a reimbursable basis. The RECIPIENT initially pays project costs as they incur. Invoicing to ECOLOGY is usually by quarter but not more often than once per month. Upon presentation of an invoice to the RECIPIENT, ECOLOGY's share of the project is reimbursed to the RECIPIENT.

   - The RECIPIENT must **submit complete backup documents with each invoice** including but not limited to all invoiced costs and time sheets - signed and dated by employee and supervisor. The RECIPIENT must keep these expenses in grant files according to budget task for a period of three years after project completion and make them available at any time for inspection by ECOLOGY.

   - Expenditures will be monitored by ECOLOGY for compliance with the budget as listed on page 8. When submitting invoices to ECOLOGY, ***costs on backup documentation shall be highlighted (or otherwise indicated) to reflect exact costs listed on the C2 Voucher Support Form.*** This will avoid time consuming data searches needed to verify costs by ECOLOGY and speed up release of payment. All payment requests must have forms A, B, C (and D if applicable for consultant services), be accompanied by a commensurate progress report, and receive ECOLOGY Project Manager approval before payment can be released.

   - Budget deviations are allowed between budget objects (mobilization, equipment, etc, e.g., a grantee may spend less money on one object and more on another), but in no circumstances may the RECIPIENT exceed the total project cost. If the

total of all budget deviations exceeds 10 percent of the entire project cost, the ECOLOGY Project Manager may require a written budget redistribution.

- **NOTE:** For payment requests, the RECIPIENT must use the ECOLOGY forms provided. Otherwise, ECOLOGY will return requests to the RECIPIENT for submittal on the correct forms.
- Requests for reimbursement must be **submitted at least quarterly** but not more than once per month by the RECIPIENT on state invoice voucher forms.
- **Right to Audit:** The RECIPIENT agrees that payment(s) made under this grant shall be subject to reduction for amount charged thereto which are found after audit examination not to constitute allowable costs under this grant. The RECIPIENT shall refund by check payable to ECOLOGY the amount of such reduction of payments under completed or terminated grants.
- All travel costs shall not exceed State travel rates: http://www.ofm.wa.gov/resources/travel.asp
- Payment of invoices is contingent on receipt of viable deliverables as determined by ECOLOGY's Project Manager.
- The source of funds provided by ECOLOGY are authorized by the 2013 Washington State Legislature, §3069 of the Capital Budget.

4. Expenditure Budget: (for RECIPIENT reporting and ECOLOGY tracking purposes):

Maximum State Floodplain Restoration Proviso Funding: 100% UP TO $1,519,014.00

	Budget	
Task	**Description**	**Amount**
1	Project Coordination, Management and Administration	$ 163,456.00
2	Obtain Consultant Services	$ 25,480.00
3	Acquisition of Right-of-Way Easement	$ 129,238.00
4	Project Engineering	$ 1,050,000.00
5	Project Permitting	$ 100,000.00
6	Floodplain Restoration Site Work	$ 50,840.00
	Total	**$ 1,519,014.00**

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Special Terms and Conditions

AGREEMENT PROVISIONS

1. **Compliance with all Laws:** The RECIPIENT shall comply fully with all applicable federal, state and local laws, orders, regulations and permits.

2. **Restrictions on Lobbying:** The RECIPIENT of this agreement is prohibited from using funds provided by this agreement for lobbying purposes in accordance with the "Administrative Requirements for RECIPIENTs of ECOLOGY Grants and Loans", Publication No. 91-18, current edition, Part III, Section G.

3. **Local Decision:** This grant is made in response to a request for financial assistance from the RECIPIENT to undertake an Integrated Floodplain Restoration project. The choice of floodplain management activities addressed by this grant is a local decision made solely by the RECIPIENT. The RECIPIENT is not acting as an agent of the State.

4. **Lawsuits:** ECOLOGY shall not be responsible for any non-contractual damage or inverse condemnation claims resulting from the structures or works constructed, repaired, restored, maintained, or improved pursuant to this grant.

5. **Indemnification, Hold Harmless and Duty to Defend**
   a. ECOLOGY shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the scope of work.

   b. This paragraph applies to negligence based claims only. All other claims are governed by paragraph 4 of this section. To the extent the constitution and laws of the State of Washington permit, RECIPIENT shall indemnify, defend and hold harmless the State, its agencies, officers and employees, from all claims, suits or actions brought for any or all injuries to persons or property arising from, or as a consequence of, negligent acts or omissions related to the construction, restoration, repair, maintenance, improvement or operation of the structures or works for which this grant is provided. If the structures or works for which this grant is received are a portion of an integrated flood protection system, RECIPIENT agrees to indemnify, defend and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the operation, maintenance, or repair of that integrated flood protection system; PROVIDED, however, that this provision is not intended to and shall not be construed as a waiver by RECIPIENT of any immunities conferred upon the RECIPIENT by RCW 86.12.037 nor is it intended to, and it shall not be construed to, confer any rights upon third parties.

   The RECIPIENT will not be required to indemnify, defend, or save harmless the State, its agencies, officers or employees as provided in the preceding paragraph of this section if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the State. Where such claims, suits, or actions result from the concurrent negligence of (a) the State, or the State's agents or employees and (b) the

RECIPIENT or the RECIPIENT's agents or employees, the indemnity provisions provided in the preceding paragraphs of this section shall be valid and enforceable only to the extent of the RECIPIENT's negligence or the negligence of its agents and employees.

c. To the extent that the constitution and laws of the State of Washington permit, RECIPIENT shall indemnify and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the continued operation, maintenance, or repair of the structures or works constructed, restored, repaired, maintained or improved as a result of this grant. If the structures or works for which this grant is received are portions of an integrated flood protection system, RECIPIENT agrees to indemnify, defend and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the operation, maintenance, or repair of that integrated flood protection system; PROVIDED, however, that the indemnity provisions of this paragraph are not intended to and shall not be construed as a waiver by RECIPIENT of any immunities conferred upon the RECIPIENT by RCW 86.12.037 nor are they intended to, and they shall not be construed to, confer any rights upon third parties. This agreement applies to all non-negligent, non-contractually based claims including, but not limited to, inverse condemnation, contribution, indemnification, trespass and/or nuisance.

6. **Responsibilities of the Project Manager:** The RECIPIENT's Project Manager shall be responsible for the procedural obligations under this agreement in addition to his/her duty to coordinate the project hereunder. He/She shall cooperate with all parties concerned in every way possible to promote successful completion of the services described in the Scope of Work.

7. **Environmental Standards:**

   a. RECIPIENTS who collect environmental-monitoring data must provide these data to ECOLOGY using the Environmental Information Management System (EIM). To satisfy this requirement these data must be successfully loaded into EIM, see instructions on the EIM website at: http://www.ecy.wa.gov/eim.
   b. RECIPIENTS are required to follow ECOLOGY's data standards when Geographic Information System (GIS) data are collected and processed. More information and requirements are available at: http://www.ecy.wa.gov/services/gis/data/standards/standards.htm. RECIPIENTS shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.
   c. RECIPIENTS must prepare a Quality Assurance Project Plan (QAPP) when a project involves the collection of environmental measurement data. QAPP is to ensure the consistent application of quality assurance principles to the planning and execution of all activities involved in generating data. RECIPIENTS must follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 3004 (ECOLOGY Publication No. 04-03-030). ECOLOGY shall review and approve the QAPP prior to start of work. The size, cost, and complexity of the QAPP should be in proportion to the magnitude of the sampling effort.

8. **Quarterly Reporting:** Quarterly Reports are contingent on the start date of the agreement. For timely preparation and review, quarterly reports shall convey essential

information in a simple, concise manner through the use of bulleted summary statements, lists, and tables and include the following:

a. A comparison of actual accomplishments to the objectives established for the reporting period including a description of issues on fisheries resources.
b. For any work related to GIS, designate data standard utilized and associated data documentation.
c. Status of project schedule.
d. Personnel changes.
b. Any difficulties encountered during the quarter.
c. Environmental benefits being achieved by the project.

Note: A quarterly progress report is required for each quarter of this agreement. If no work was conducted in that quarter, state that and submit the report.

Reporting Periods

Progress Report	Reporting Period	Date Due
First Quarter (Year 1)	August 1 – September 30	October 30
Second Quarter	October 1 – December 31	January 30
Third Quarter (Year 2)	January 1 – March 31	April 30
Fourth Quarter	April 1 – June 30	July 30
First Quarter	July 1 – September 30	October 30
Second Quarter	October 1- December 31	January 30
Third Quarter (Year 3)	January 1 – March 31	April 30
Fourth Quarter	April 1 – June 30	July 30

For Report Contents and ECOLOGY's form: Please visit our website at: http://www.ecy.wa.gov/programs/sea/grants/flooddamageprevention

9. **Identification of Project Materials:** All reports, maps, and other documents published as part of this grant agreement shall carry the name of the RECIPIENT, ECOLOGY's grant number (in the upper right hand corner), title, the specific task number of the product and date centered on the front cover or title page (or in the case of maps, the block which contains the name of the Government unit or Department).

10. **Format for Publications and Brochures:** Any (hard copy) publications or **brochures** required as a product of this agreement shall conform to minimum standards of size, 8-1/2" x 11" white, recycled paper equivalent in weight to 30 lb. bond, single spaced, printed both sides, no less than 1" margins. Photos, illustrations, and graphs must be of reproducible quality. Any publications or brochures intended for public distribution shall comply with graphic requirements as specified in ECOLOGY's "Publications Handbook", publication number 91-41 and any additional specifications as may be outlined in the Scope of Work.

11. **Amendments and Modifications:** This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

12. **Minority And Women's Business (MWBE) Participation:** The RECIPIENT agrees to solicit and recruit, to the maximum extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this Agreement.

    In the absence of more stringent goals established by the RECIPIENT's jurisdiction, the RECIPIENT agrees to utilize ECOLOGY'S goals for minority- and women-owned business participation in all bid packages, request for proposals, and purchase orders. These goals are expressed as a percentage of the total dollars available for the purchase or contract and are as follows:

Construction/Public Works	10% MBE	6%WBE
Architecture/Engineering	10% MBE	6%WBE
Purchased Goods	8% MBE	4%WBE
Purchased Services	10% MBE	4%WBE
Professional Services	10% MBE	4%WBE

    Meeting these goals is *voluntary* and no contract award or rejection shall be made based on achievement or non-achievement of the goals. Achievement of the goals is encouraged, however, and the RECIPIENT and ALL prospective bidders or persons submitting qualifications shall take the following affirmative steps in any procurement initiated after the effective date of this Agreement:

    a. Include qualified minority and women's businesses on solicitation lists.
    b. Assure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.
    c. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
    d. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
    e. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

    By signing this Agreement, the RECIPIENT certifies that the above steps were, or will be followed. Any contractor engaged by the RECIPIENT under this agreement shall be required to follow the above five affirmative steps in the award of any subcontract(s).

    The RECIPIENT shall report to ECOLOGY at the time of submitting each invoice, on forms provided by ECOLOGY, payments made to qualified firms. The report will address:

    a. Name and state OMWBE certification number of any qualified firm receiving funds under the voucher, including any sub-and/or sub-subcontractors.
    b. The total dollar amount paid to qualified firms under this invoice.

13. **Right to Audit:** The RECIPIENT agrees that payment(s) made under this grant shall be subject to reduction for amount charged thereto which are found after audit examination not to constitute allowable costs under this grant. The RECIPIENT shall refund by check payable to ECOLOGY the amount of such reduction of payments under completed or terminated grants.

14. **Grant Closeout:** The end date for this project is **June 30, 2017.** A grace period of **45**[1] **days** for all deliverables and invoice vouchers is allowed as stipulated in the scope of work or by the State Office of Financial Management (OFM) through ECOLOGY's Fiscal Office.

15. **All Writings Contained Herein:** This agreement, the appended "General Terms and Conditions", and the Department's current edition of "Administrative Requirements for RECIPIENTs of ECOLOGY Grants and Loans" contain the entire understanding between the parties, and there are no other understandings or representations except those set forth or incorporated by reference herein. No subsequent modification(s) or amendments to this agreement shall be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement.

IN WITNESS WHEREOF, the parties hereby sign this Grant Agreement:

State of Washington
Department of ECOLOGY

12/9/14

Gordon White — Date
Program Manager
Shorelands and Environmental
Assistance Program

Approved as to form only by
The Assistant Attorney General

Clallam County

11/25/2014

Michael C. Chapman, Chair — Date
Board of County Commissioners

Approved as to form only by

Kristina Nelson-Gross
Deputy Prosecuting Attorney
Clallam County

[1] In the event the agreement ends at June 30, at the end of the State biennium, the RECIPIENT will be required to submit both payment request and all deliverables by July 18 or the date as decided by the ECOLOGY Fiscal Office.

Attachment 1: General Terms And Conditions

Pertaining To Grant And Loan Agreements Of The Department Of ECOLOGY

A. RECIPIENT PERFORMANCE

All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT's employees. The RECIPIENT shall only use contractor/consultant assistance if that has been included in the agreement's final scope of work and budget.

B. SUBGRANTEE/CONTRACTOR COMPLIANCE

The RECIPIENT must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

C. THIRD PARTY BENEFICIARY

The RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this agreement, the state of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

D. CONTRACTING FOR SERVICES (BIDDING)

Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. RECIPIENT shall retain copies of all bids received and contracts awarded, for inspection and use by the DEPARTMENT.

E. ASSIGNMENTS

No right or claim of the RECIPIENT arising under this agreement shall be transferred or assigned by the RECIPIENT.

F. COMPLIANCE WITH ALL LAWS

1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits.

   Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to the DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.

2. Discrimination. The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. If the agreement is federally-funded, the RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.

3. Wages and Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.

4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

G. KICKBACKS

The RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission or gift in return for award of a subcontract hereunder.

H. AUDITS AND INSPECTIONS

1. The RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object. All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

   Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the RECIPIENT.

2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.

3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.

4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit RECIPIENTs), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends $500,000 or more in a year in Federal funds. The $500,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within ninety (90) days of the date of the audit report.

I. PERFORMANCE REPORTING

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments may be withheld if required progress reports are not submitted.

Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within thirty (30) days following the end of the quarter being reported.

J. COMPENSATION

1. Method of compensation. Payment shall normally be made on a reimbursable basis as specified in the grant agreement and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by the DEPARTMENT along with documentation of the expenses. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and approved as satisfactory by the Project Officer.

The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work. Instructions for submitting the payment requests are found in "Administrative Requirements for RECIPIENTs of ECOLOGY Grants and Loans", Part IV, published by the DEPARTMENT. A copy of this document shall be furnished to the RECIPIENT. When payment requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee. Payment requests shall be submitted to the DEPARTMENT and directed to the Project Officer assigned to administer this agreement.

2. Period of Compensation. Payments shall only be made for actions of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.

3. Final Request(s) for Payment. The RECIPIENT should submit final requests for compensation within forty-five (45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.

4. Performance Guarantee. The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT's performance. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT's sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.5. herein.

5. Unauthorized Expenditures. All payments to the RECIPIENT may be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.

6. Mileage and Per Diem. If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.

7. Overhead Costs. No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

K. TERMINATION

1. For Cause. The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of the DEPARTMENT, to perform any obligation required of it by this agreement, the DEPARTMENT may refuse to pay any further funds there under and/or terminate this agreement by giving written notice of termination.

   A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT under this agreement, at the option of the DEPARTMENT, shall become DEPARTMENT property and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

   Despite the above, the RECIPIENT shall not be relieved of any liability to the DEPARTMENT for damages sustained by the DEPARTMENT and/or the State of Washington because of any breach of agreement by the RECIPIENT. The DEPARTMENT

may withhold payments for the purpose of setoff until such time as the exact amount of damages due the DEPARTMENT from the RECIPIENT is determined.

2. Insufficient Funds. The obligation of the DEPARTMENT to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of the DEPARTMENT is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above.

   When this agreement crosses the RECIPIENT's fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT's governing body; provided, however, that nothing contained herein shall preclude the DEPARTMENT from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.

3. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date agreed upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this agreement.

L. WAIVER

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this agreement unless stated as such in writing by the authorized representative of the DEPARTMENT.

M. PROPERTY RIGHTS

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes. Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.

2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.

3. Tangible Property Rights. The DEPARTMENT's current edition of "Administrative Requirements for RECIPIENTs of ECOLOGY Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.

4. Personal Property Furnished by the DEPARTMENT. When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT's possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:
   a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.
   b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.
6. Conversions. Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

N. SUSTAINABLE PRODUCTS

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is encouraged to implement sustainable practices where and when possible. These practices include use of clean energy, and purchase and use of sustainably produced products (e.g., recycled paper). For more information, see http://www.ecy.wa.gov/sustainability/.

O. RECOVERY OF PAYMENTS TO RECIPIENT

The right of the RECIPIENT to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at the DEPARTMENT's sole discretion, be required to repay to the DEPARTMENT all grant/loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of the DEPARTMENT by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per year from the time the DEPARTMENT demands repayment of funds. If payments have been discontinued by the DEPARTMENT due to insufficient funds as in Section K.2 above, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. Any property acquired under this agreement, at the option of the DEPARTMENT, may become the DEPARTMENT'S property and the RECIPIENT'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

P. PROJECT APPROVAL

The extent and character of all work and services to be performed under this agreement by the RECIPIENT shall be subject to the review and approval of the DEPARTMENT through the Project Officer or other designated official to whom the RECIPIENT shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Officer or other designated official as to the extent and character of the work to be done shall govern. The RECIPIENT shall have the right to appeal decisions as provided for below.

Q. DISPUTES

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of in writing shall be decided by the Project Officer or other designated official who shall provide a written statement of decision to the RECIPIENT. The decision of the Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of the DEPARTMENT a written appeal.

In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

R. CONFLICT OF INTEREST

No officer, member, agent, or employee of either party to this agreement who exercises any function or responsibility in the review, approval, or carrying out of this agreement, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

S. INDEMNIFICATION

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.
2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

T. GOVERNING LAW

This agreement shall be governed by the laws of the State of Washington.

U. SEVERABILITY

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

V. PRECEDENCE

In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for RECIPIENTs of ECOLOGY Grants and Loans"; and (e) the General Terms and Conditions.

W. FUNDING AVAILABILITY

The DEPARTMENT's ability to make payments is contingent on availability of funding. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of this agreement, the DEPARTMENT, at its sole discretion, may elect to terminate the agreement, in whole or part, or to renegotiate the agreement subject to new funding limitations and conditions. The DEPARTMENT may also elect to suspend performance of the agreement until the DEPARTMENT determines the funding insufficiency is resolved. The DEPARTMENT may exercise any of these options with no notification restrictions.

SS-010 Rev. 04/04

MODIFIED 12/13

Exhibit 1: Project Vicinity Map

Dungeness River Watershed

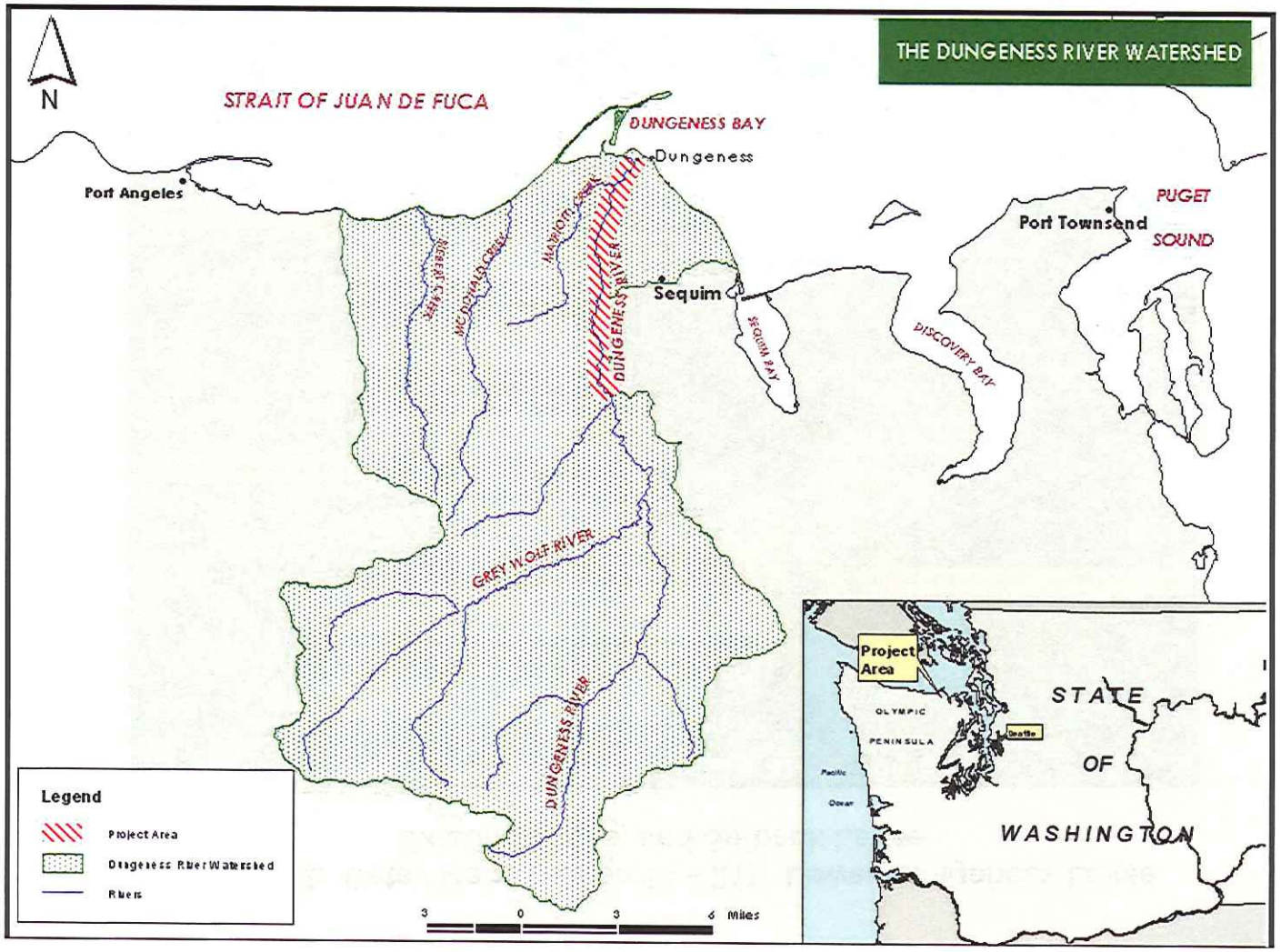
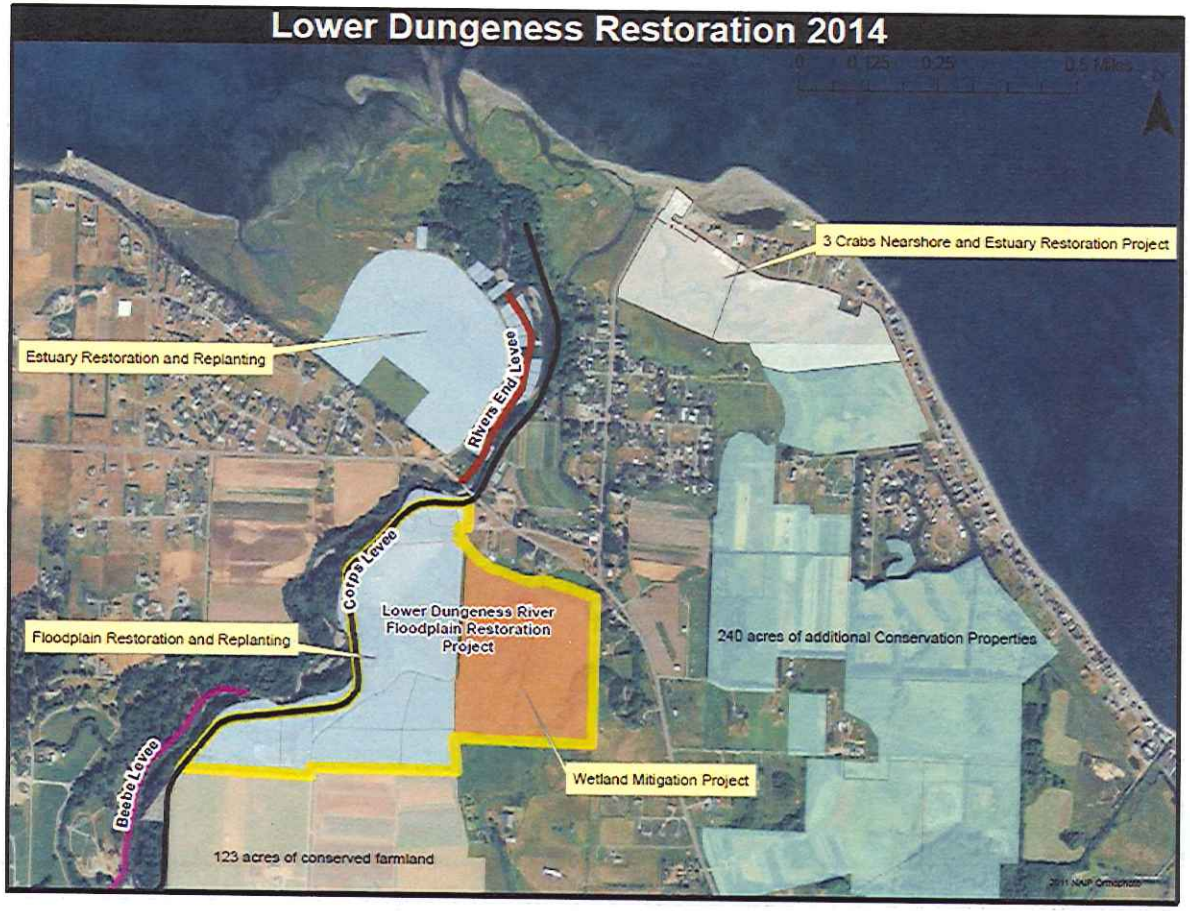


EXHIBIT 2: Detail Maps (pages 14 – 21): Lower Dungeness Levee Existing Levee, and Setback Levee

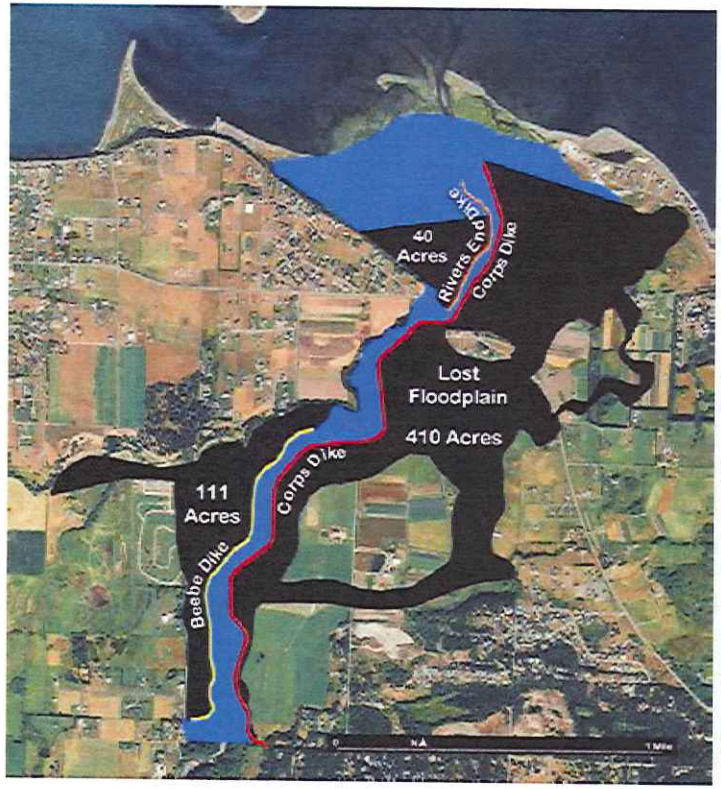


Lower Dungeness River Floodplain Restoration Project

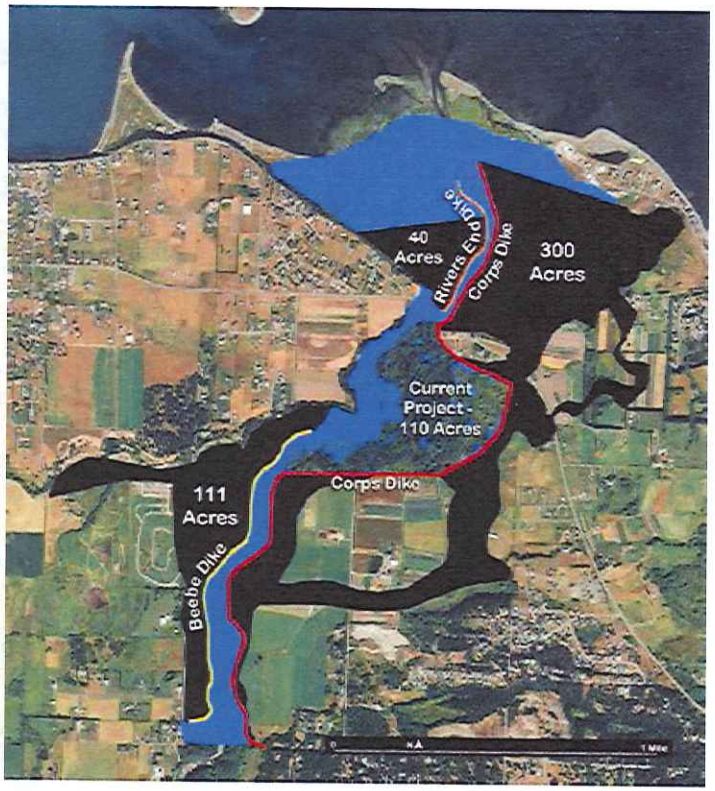
Existing Conditions

Proposed Restoration

Lower Dungeness River Floodplain Restoration Project



Existing Conditions



Proposed Restoration

Lower Dungeness River Floodplain Restoration

Before

After

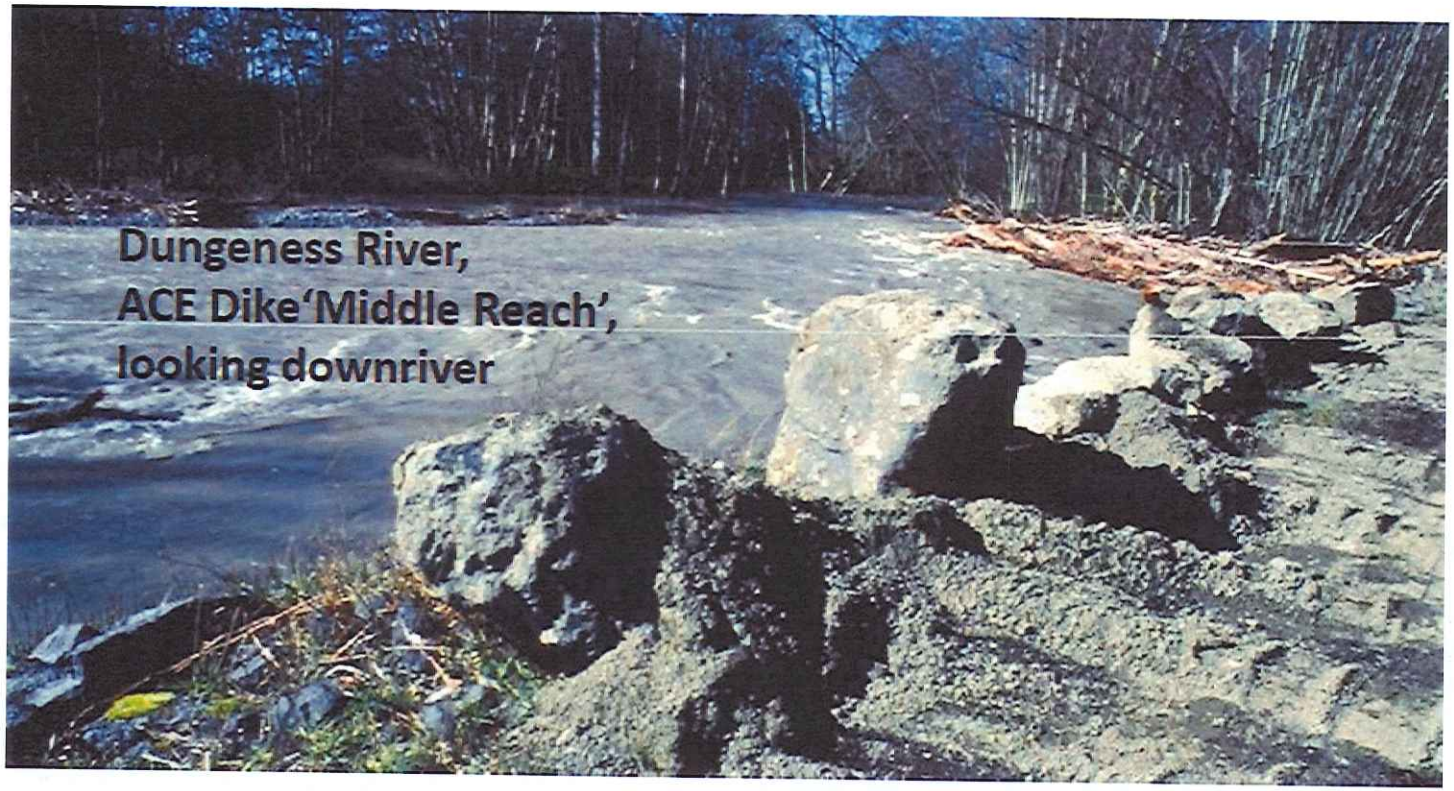

Dungeness River,
ACE Dike 'Middle Reach',
looking downriver

Exhibit 3: Status of Property Acquisitions for the Lower Dungeness River Restoration Project

For Quarterly Reporting #___ in accordance with ECOLOGY Grant G1400___

The following documentation will accompany each quarterly progress report *for acquisition activities occurring within this reporting period*:

1) A map with the property location highlighted for each property acquired;
2) Acquisition documents for each property;
3) Name and address of each resident;
4) (Labeled) photo documentation of project site to give an understanding of the scope of this grant project

Property Acquired (Name and Address)	Plat Location	Appraisal (Date)	Review Apprai (Date)	Closing Statements (Date)	Site Photos* (✓)

*included with this report