

BEFORE THE BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON

APPROVAL OF A MEMORANDUM OF)
AGREEMENT BETWEEN THE FAMILY) RESOLUTION NO. 06-260
FOREST FOUNDATION AND LEWIS)
COUNTY)

WHEREAS, the Family Forest Foundation ("Foundation") has been developing a Habitat Conservation Plan for family forest landowners in Lewis County since 1997, the Family Forest Habitat Conservation Plan (FFHCP); and

WHEREAS, an approved Habitat Conservation Plan under Section 10 of the Endangered Species Act results in the issuance of an incidental take permit; and

WHEREAS, Lewis County has informally provided support in developing the FFHCP; and

WHEREAS, the Foundation and the County anticipate that completing the FFHCP will require closer coordination; and

WHEREAS, Lewis County and the Foundation are seeking to formalize their relationship with regard to the roles and responsibilities in completing the FFHCP; and

WHEREAS, a Memorandum of Agreement has been drafted defining the respective roles of Lewis County and the Foundation has been drafted;

BE IT RESOLVED by the Board of County Commissioners to approve the signing the Memorandum of Agreement between Lewis County and the Family Forest Foundation.

DONE IN OPEN SESSION this 21st of August, 2006

ATTEST:

Karri Muir
Karri Muir, Clerk of the
Board of County Commissioners

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON

Richard A. Gahan
Chairman

APPROVED AS TO FORM
Prosecuting Attorney

By: E. Loschever
Civil Deputy



[Signature]
Member

Dennis Badalier
Member

Recommendation:

The Board of County Commissioners should approve the signing of the MOA between Lewis County and the Family Forest Foundation.

Attachments:

Agenda Item Summary

Read Ahead

Resolution

Proposed MOA between Lewis County and the Family Forest Foundation

MEMORANDUM OF AGREEMENT BETWEEN

LEWIS COUNTY AND THE FAMILY FOREST FOUNDATION

This Memorandum of Agreement ("MOA") is made and entered into between Lewis County ("County") and the Family Forest Foundation ("Foundation") (collectively, the Parties").

1.0. Purpose.

In anticipation of completing the Family Forest Habitat Conservation Plan ("FFHCP") and applying for Incidental Take Permits ("ITPs") to the U.S. Fish and Wildlife Service ("USFWS") and the National Marine Fisheries Service (collectively, the "Services"), the Parties are entering into this MOA in order to (1) identify specific tasks that would benefit from cooperation that are needed to prepare the FFHCP for submission to the Services, such as the identification and pursuit of interim funding mechanisms to facilitate completion of the FFHCP and associated documents; (2) define respective roles in performing those tasks; and (3) establish the implementing framework for the FFHCP.

2.0 Background.

2.1 Approximately 1,384,000 acres of public and private forestlands lie in the County. Of this, approximately 134,000 acres are small scale ownerships, typically ranging from a few acres to a few hundred acres. Most such small scale "family forest" landholdings in the County are located in the lower elevations of the Cowlitz and Chehalis River drainage basins and primarily include smaller streams with fairly low stream gradients. In recognition of the important role family forests make to the public interest, the County wishes to preserve family forest owners' abilities to maintain these small landholdings in timber production.

2.2 There are fish and wildlife species which may visit or reside in these small family forests holdings that are listed as "threatened" or "endangered" under the Endangered Species Act, 16 U.S.C. § 1531 *et seq.* ("ESA"). Under the ESA and its implementing regulations, it is unlawful for a landowner to "take" any member of a listed species in the course of carrying out an otherwise lawful land use activity without an incidental take permit issued under Section 10(a) of the ESA and approval of an accompanying habitat conservation plan by the applicable Service. In recognition of these matters, the Foundation has prepared a draft FFHCP to submit to the Services as part of an application for programmatic ITPs.

2.3 The Foundation, in cooperation with the County, has been developing the FFHCP since 1997. Since then, it has committed over 3 million dollars in the development of scientifically sound habitat conservation measures. Family forests provide numerous benefits to the County including clean water and air,

fish and wildlife habitat, biodiversity, carbon sequestration, flood control and contributions to local economies and cultures. The existence of sustainable family forests contributes significantly to the County's objectives under the Growth Management Act of maintaining a working rural component in the County's land base.

2.4 The FFHCP is intended to provide regulatory relief and certainty as an incentive to those landowners wishing to keep their lands in forestry enterprises. The FFHCP will provide family forest landowners in the County with a voluntary opportunity to substitute FFHCP conservation measures for the applicable State Forest Practice Rules. The FFHCP contemplates that Landowners will develop landowner specific implementation plans and submit them for review by the County. Under the approach being discussed, applicants will be issued a Certificate of Inclusion under the ITPs issued to the County if these plans are found to be consistent with the applicable guidelines and requirements of the FFHCP.

3.0 MOA.

3.1 Tasks Related to the Review, Approval and Implementation of the FFHCP: The Parties have identified the following immediate tasks that require work to keep the FFHCP process moving forward:

- 3.1.1** Completion of the FFHCP.
- 3.1.2** Preparation of a Draft Environmental Impact Statement.
- 3.1.3** Negotiation of an Implementation Agreement.
- 3.1.4** Development of an Implementation Manual.

3.2 Implementation.

3.2.1 Scope.

This Memorandum of MOA is intended to define the Parties' respective roles, responsibilities and opportunities for collaboration for the tasks identified in Section 3.1.

3.2.2 General.

The County and the Foundation will keep each other informed of relevant plans and schedules, will respond to each entities request for information to the extent reasonable and practicable, and will strive to recognize and address any problems arising from the implementation of the FFHCP.

3.3.3 County Responsibilities.

The County will (a) review and provide comments on all draft documents, (b) participate in such meetings with the Services, Foundations, Tribes and other

stakeholders as the County determines necessary, and (c) share data with the Foundation as provided for in Section 3.6. The County views the Implementation Manual as particularly important to successful implementation of the FFHCP and anticipates working particularly closely with the Foundation on this task.

3.3.4 Foundation Responsibilities.

To the extent of its funded abilities, the Foundation will (a) take a lead role in preparing a draft Implementation Plan; (b) prepare initial drafts of the FFHCP and associated documents, including the DEIS and the Implementation Agreement; (c) facilitate and participate in such meetings with the Services, County, Tribes, DNR, and other stakeholders as the Foundation, in coordination with the County, deems necessary for the FFHCP project; (d) take a lead role in an outreach program to educate family landowners within Lewis County about the FFHCP project, and (e) assist the County as needed to complete the FFHCP project.

3.3.5 Data Sharing.

The Foundation will provide the County with data developed in the FFHCP process along with additional data collected during plan implementation as needed by the County for its implementation requirements.

The County will provide the Foundation with access to Geographic Information Systems data (including tax parcel data) needed for FFHCP plan development and implementation. The County will also provide the Foundation with GIS services within the constraints of its GIS workload and to the extent permitted by law.

4.0 Media Communications

The parties recognize the need for communications with the media to keep the public informed about the progress of the HCP and to help in generating additional financial support for the effort. Media questions regarding the respective roles of the Parties during the period of this Agreement will be referred to and answered by an appropriate representative of the Party to which the question applies.

5.0 General Provisions.

- a) Resources. Nothing in this MOA shall require the Parties, in fulfilling their obligations and responsibilities as provided herein, to expend funds that have not been lawfully appropriated and administratively allocated for such use.
- b) Term. This MOA shall remain in effect until an Implementing Agreement for the FHCCP is entered into.

- c) Cancellation. Either party may cancel this MOA, upon (30) thirty days written notice to the other party.
- d) Notices. Notices hereunder may be sent to, and all contacts regarding this MOA shall be made through the following persons, or their successor representatives as such may be appointed with notice given to the other Party. Changes in representatives do not require approval from the other Party and are effective upon receipt of written notice.

<p>Lewis County</p> <p>Larry M. Keeton Chief of Staff 351 NW North St Chehalis, WA 98532 Ph: 360-740-1419 LMKeeton@co.lewis.wa.us</p> <p>with copy to:</p> <p>Kernen Lien Senior Planner Lewis County Community Development 350 N Market Blvd. Chehalis, WA 98532 Ph: 360-740-1487 kplien@co.lewis.wa.us</p> <p>and</p> <p>Douglas Jensen, Chief Civil DPA Lewis County Prosecuting Atty. Ph: 360.740.1423 Fax 360.740.1497 dejensen@co.lewis.wa.us</p>	<p>The Family Forest Foundation</p> <p>Steve Stinson Executive Director, Family Forest Foundation 57 West Main St., Chehalis WA 98532 Ph: 360-345-1023 Fax: 360-748-7717 stevestinson@familyforestfoundation.org</p> <p>with copy to:</p> <p>Tom Fox, Family Forest Foundation P.O. Box 311 Ethel, WA 98542 Ph: 360-978-4305 Fax: 360-978-5747 tmp@myhome.net</p> <p>and:</p> <p>Patrick Ryan 1201 Third Avenue, 40th Floor Seattle, WA 98101 Ph: 206-359-8662 Fax: 206-359-9662 PRyan@perkinscoie.com</p>
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- e) Amendments. The Parties may propose modifications to this MOA by providing written notice to the other Party. Such notice shall include a statement of the proposed modification and the reason for the modification. The amendment will become effective upon written approval by all of the Parties.
- f) Dispute Resolution. Each Party shall have all remedies otherwise available to protect its interests, except that no Party shall be liable for any

damages, money or otherwise, arising from this MOA. The Parties to this MOA agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon within a reasonable time, not to exceed 60 days from receipt of notice requesting utilization of this provision.

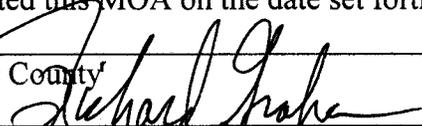
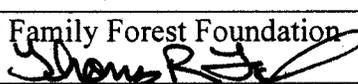
g) No Third Party Beneficiaries. This MOA does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this MOA to maintain a suit for personal injury, damages, injunction, declaratory judgment or otherwise based on the provisions of this MOA. The duties, obligations, and responsibilities of the Parties to this MOA, with respect to third parties, shall remain as imposed under existing law.

h) Severability. If any provision of this MOA is held to be invalid or otherwise unenforceable, all other provisions may remain in effect, to the extent that they can be reasonably applied in the absence of the invalid or unenforceable provision, and continue to generally accomplish the purposes of the MOA.

i) No Agency Relationship. This MOA shall not itself make or be deemed to make any Party to this MOA the agent for or the partner of the other.

j) References to Regulations and Governing Law. The terms of this MOA shall be governed by and construed in accordance with the law of the State of Washington. Nothing in this MOA is intended to limit the authority of the County to fulfill its responsibilities under applicable Federal, State or local laws. All activities undertaken pursuant to this MOA must be otherwise lawful and in compliance with all applicable local, State and Federal laws and regulations.

IN WITNESS WHEREOF, duly authorized representatives of the Parties hereto have executed this MOA on the date set forth below:

Lewis County By:  Name: <u>RICHARD GRAHAM</u> Title: <u>COMMISSIONER</u> Date: <u>8/28/06</u>	The Family Forest Foundation By:  Name: <u>Thomas R Fox</u> Title: <u>President</u> Date: <u>8-25-06</u>
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