



Staff Report

For City Council Meeting - 12/3/2025

Subject - Visitors - North Coast Land Conservancy (NCLC) - Mark McLaughlin & Jon Wickersham - 2nd Street MOU Agreement

Synopsis: Mark (NCLC Conservation Director) and Jon (NCLC Associate Director) are in attendance to present Council with an opportunity for what has come to be known as “the 2nd Street property”.

The proposed Memorandum of Understanding (MOU) between the City of Gearhart and the North Coast Land Conservancy (NCLC) establishes a collaborative framework for acquiring and protecting properties along Neacoxie Creek. The agreement outlines shared goals for watershed health, conservation of natural resources, and long-term preservation of riparian and wetland areas. It also identifies the scope of work for each party, including NCLC’s responsibility for transactional support—such as title research, appraisal review, and assistance with donation agreements—and the City’s responsibility for stewardship, property management, and associated legal or closing costs. If adopted, this MOU will also serve as the template for future property donations to the City under similar conservation objectives, including the proposed donation of the 2nd Street property.

Tonight’s discussion is intended to give the City Council a full understanding of the proposed agreement and to receive direction on whether it aligns with the City’s priorities for conservation, property acquisition, and long-term watershed management. While entering into the MOU is one of the available options, staff is specifically seeking Council guidance before proceeding. Our attorney will be present to support the discussion, answer questions, and clarify any legal considerations related to the agreement.

Council Options:

- 1) Enter into the agreement as drafted via simple motion;
- 2) Direct staff to make amendments and bring the revised MOU back for Council approval.
- 3) Take other action as desired by the Council.

Recommendation: Staff recommends that the City Council first discuss the long-term vision for the 2nd Street property before taking action on the proposed MOU. Clarifying whether the community will benefit more from limited public access or from preserving the site exclusively for conservation will help shape the appropriate deed restrictions and stewardship approach. This conversation is an opportunity to define how the property can best serve Gearhart's long-term environmental and community values. Once the Council provides this direction, staff and the City Attorney can refine the document and, if desired, bring the MOU back for consideration under a structure that supports the City's goals.

Legal Analysis: The MOU establishes a nonbinding cooperative framework between the City and NCLC. It outlines duties, responsibilities, and expectations but does not obligate the City to acquire any specific property. It allows either party to terminate under defined conditions and assigns long-term stewardship and associated costs to the City if acquisitions occur. If executed, the MOU would provide the legal structure for processing the 2nd Street property donation and would serve as the standard template for future conservation-focused property donations.

Financial Analysis: The proposed partnership with NCLC carries financial considerations for the City. While NCLC does not charge for its services, the City is responsible for all hard costs associated with property acquisition, including legal review, title work, due-diligence activities, and closing fees. Accepting donated properties also creates long-term stewardship obligations—such as vegetation management, hazard tree mitigation, and ongoing monitoring—which must be funded in perpetuity. Although some costs may be offset through grants, funding is not guaranteed, and the protected-use restrictions on these properties mean they cannot support revenue generation or alternative municipal uses in the future.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be 'Chad', is written above the name 'Chad'.

Chad

Facilitation Framework

- **Execute a mutual agreement** (*see example in Exhibit 1*) that identifies:
 - Expectations
 - Goals and outcomes
 - Scope of work
 - Proposed timeline of implementation
- **Typical Project Workflow**
 - Potential donation¹ property identified for protection
 - ↓
 - Site visit / conservation value evaluation / environmental site assessment
 - ↓
 - Due diligence / title review / project soundness
 - ↓
 - Remedy any encumbrances, contingencies, exceptions, etc. (*if needed*)
 - ↓
 - *Appraisal (*acquired by landowners who are seeking a tax-deductible donation*)
 - ↓
 - Complete donation agreement with landowner(s) → Include deed restriction language for property to remain as natural area
 - ↓
 - Closing / transfer of property to City ownership
- ⁽¹⁾ **NOTE:** NCLC is not expecting to engage in fundraising or grant writing for acquisition funds as part of this facilitation partnership.

Exhibit 1: Draft MOU

MUTUAL AGREEMENT

This Mutual Agreement (“Agreement”) is made by and between NORTH COAST LAND CONSERVANCY, an Oregon public benefit 501(c)(3) nonprofit corporation (“NCLC”), and THE CITY OF GEARHART, a subdivision of the State of Oregon (“City”), individually a “Party” and collectively the “Parties”.

The Parties agree as follows:

1. The Parties share goals and objectives for improved forested watershed health and protection of natural water resources (healthy creeks, streams, wetlands, riparian areas, forests, etc.) and intend to work together to advance mutual interests pursuant to this Agreement.
2. NCLC is a land trust in the business of facilitating natural lands acquisitions for the public benefit, whose boundaries are the Columbia River to the Siletz Bay. NCLC has a mission to conserve natural resources in perpetuity. Facilitating the City’s acquisition of the properties described herein aligns with that mission.
3. The City is working to acquire lands along Neacoxie Creek for the public benefit.
4. The City intends to own and manage properties along Neacoxie Creek for the protection of its conservation values and watershed resources for the citizens of Gearhart.
5. **Purpose.** The Purpose of this Agreement is to establish the operating framework necessary for NCLC to work in collaboration with the City to protect property along Neacoxie Creek.
6. **Effective Date and Duration.** This Agreement is effective when signed by both Parties and shall be in force through completion of all tasks listed in Exhibit B (“Scope of Work”) attached hereto and incorporated herein, with the completion date to be mutually agreed upon in writing.
7. **Tasks.** The City and NCLC will be responsible for completion of certain acquisition tasks as more specifically provided for in the Scope of Work (Exhibit B). Unless otherwise agreed in writing between the Parties, the City shall be fully responsible for the long-term stewardship of the Property.
8. **Press.** Each Party shall name the other as a key partner in all project communications, i.e., newsletters, website, social media and press releases about projects under the scope of this Agreement. Further, the Parties shall submit a draft

of any press release about a project to the other Party for review and comment prior to release.

9. **Partnership.** The Parties may use the other's name in grant applications with the other Party's prior consent.

10. **Compensation/Fees.** NCLC will charge no fees directly to the City, nor will NCLC incur any hard costs (attorney fees, outside service fees, etc.). All hard costs for outside services and supplies are the responsibility of the City. Hard costs may be eligible for grant funding, and will be written into grants where appropriate. If grant funding is being sought to support a City project, NCLC will be included as a line item to help cover their staff time and expenses.

11. **Ownership of Product.** NCLC shall own and retain all rights, including copyrights, patents, trade secrets, trademarks, and other intellectual property and proprietary rights in any and all NCLC provided products delivered pursuant to completion of tasks as provided in this Agreement, including any amendments or revisions thereto.

12. **Non-Disclosure.** Parties covenant that during and after the term of this Agreement, the Parties shall not disclose to anyone (except to the extent necessary for the Parties to perform duties hereunder or as required by law) any confidential or proprietary information concerning the business or affairs of Parties or its clients which the Parties may acquire in the course of or incident to the Parties engagement. This covenant shall survive the termination of this Agreement.

13. **Termination.** If the City fails to acquire a property within three (3) years of the effective date of this Agreement, this Agreement will automatically terminate, with the Parties to have no further obligation to one another after said termination. Otherwise, this Agreement will terminate in accordance with Section 6 herein.

14. **Assignment.** Neither Party can assign this Agreement without the other Party's prior written consent.

15. **Entire Agreement.** This Agreement, including Exhibits supersedes any and all agreements, either oral or in writing, between the Parties and contains all of the covenants and agreements between the Parties. Each Party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, with regard to this Agreement have been made by any Party, or anyone acting on behalf of any Party, which are not embodied herein.

16. **Modification.** This Agreement may be reviewed and modified as needed to complete the work intended by the Parties. No modification or waiver of this Agreement will be binding unless in writing and signed by both Parties.

17. **Attorneys' Fees.** Attorneys' fees, costs and disbursements necessary to enforce this Agreement through mediation, arbitration and/or litigation, including appeals, will be awarded to the prevailing Party.

18. **Waiver.** Failure by either Party to enforce any provision of this Agreement does not constitute a continuing waiver of that provision or any other provision of the Agreement.

19. **Indemnification.** Each Party will indemnify the other Party, its directors, officers, agents and employees, from any claims, liabilities, demands, damages, actions or proceeding arising from or relating to the activities or omissions of its officers, employees, contractors, agents or representatives in carrying out this Agreement.

20. **Severability.** The Parties agree that if any term or provision of this Agreement is declared by a court and / or arbitrator of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

21. **Notices.** Any notice under this Agreement shall be in writing and delivered in person or mailed, properly addressed and postage prepaid, to a Party at the Party's main office and to the attention of the persons specified below. Notices are deemed to have been given upon personal delivery or, if mailed, at the expiration of the 3rd (third) day after date of deposit in the U.S. mail.

22. **Liens.** The City shall be responsible for discharging any lien placed on the Property resulting from the work of the City or its contractors on the Property.

NORTH COAST LAND CONSERVANCY

_____ Dated: _____
Betsy Ayers as President

CITY OF GEARHART

_____ Dated: _____
Chad Sweet as City Manager of the City of Gearhart

Exhibit A: Properties Map

Neacoxie Riparian Corridor Properties



Exhibit B: Scope of Work

NCLC SCOPE OF WORK

NCLC shall provide the following transactional support:

1. Assist in all transactional aspects of project acquisitions, including but not limited to title research and appraisal review.
2. Assist the City in finalizing donation agreements and deed restrictions for conserved properties.
3. Support PR/communication about the project.

CITY SCOPE OF WORK

City is responsible for the following:

1. Designating a lead contact for this project.
2. Committing to long-term preservation of the properties.
3. Placing deed restrictions on the properties to promote natural values in perpetuity.
4. Owning and managing the properties.
5. Solicitation of additional community donations for property acquisitions.
6. Including a line item for NCLC time in grant applications when appropriate/applicable.
7. Closing fees and any fees (legal, transaction, etc.) associated with the City's review and acquisition of the properties.
8. Support PR/communication about the project.

Exhibit 2: Draft Deed Restrictions

COVENANTS & RESTRICTIONS

_____ (“Owner”) is the owner of the real property located in Clatsop County, Oregon more particularly described in Exhibit “A” (“Property”) attached hereto and incorporated herein. These Covenants and Restrictions are for the protection and conservation of the forestland, riparian lands, wetland functions, waterway functions, and conservation values of the Property for the benefit of the citizens, wildlife, and water quality of the City of Gearhart and Clatsop County.

1. Owner and successors and assigns of the interest in the land agree to provide for the perpetual protection and conservation of the Property by preserving the Property’s natural, open space, ecological, and hydrological values, and agree to not take actions that materially impair or interfere with those values.
2. These Covenants and Restrictions shall run with and burden the Property in perpetuity.
3. Owner, successors and assigns of the interest in the land, and all beneficiaries of these Covenants and Restrictions shall have the right to enforce the same at law or in equity.
4. Owner, and successors and assigns of the interest in the land declare that the Property shall be held, transferred, sold, conveyed and occupied subject to these Covenants and Restrictions.
5. The terms and conditions of these Covenants and Restrictions shall be implicitly and explicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or any part of the Property.
6. These Covenants and Restrictions cannot be released or modified.
7. Except as necessary to maintain the Property consistent with these Covenants and Restrictions, there shall be no:
 - a. use of the Property for mitigation purposes that would allow filling or degradation of other wetland or natural habitat areas on any other property;

- b. removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of any native vegetation on the Property, or any disturbance or change in the natural habitat of the Property unless it is consistent with maintaining the wetland and waterway functions and values of the Property. Hazard trees that pose a specific threat to public safety may be felled and left on the Property;
 - c. agricultural, commercial, or industrial activity undertaken or allowed on the Property; nor shall any right of entry on or across the Property be allowed or granted if that right of entry is used in conjunction with agricultural, commercial, or industrial activity;
 - d. domestic animals allowed to graze or dwell on the Property;
 - e. filling, excavating, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock minerals or other materials, nor any storage nor dumping of ashes, trash, garbage, or of any other material, and no changing of the topography of the land of the Property in any manner;
 - f. structures on the Property, including but not limited to the construction or placing of buildings, mobile homes, advertising signs, billboards or other advertising material, or vehicles;
 - g. legal or de facto division, subdivision, or partitioning of the Property;
 - h. use of motorized off-road vehicles on the Property.
8. Owner reserves all other rights accruing from its ownership of the Property including but not limited to the exclusive possession of the Property, the right to transfer or assign their interest in the same, the right to take action necessary to prevent erosion on the Property, to protect the Property from losing its wetland or waterway functions and values, or to protect public health or safety; and the right to use the Property in any manner not prohibited by these Covenants and Restrictions and which would not defeat or diminish the conservation purposes of these Covenants and Restrictions.
9. If any provision of these Covenants and Restrictions, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of these Covenants and Restrictions, or the application of such

10. The property shall be used by owner, successors and assigns as a natural protected area in perpetually for the public. The North Coast Land Conservancy, an Oregon public benefit 501(c)(3) nonprofit corporation land trust in the business of protecting lands for the public benefit, retains the possibility of reverter such that when the property is no longer so used, the Interest of owner, successors and assigns shall automatically terminate, and fee simple title shall revert to the North Coast Land Conservancy or assigns.

_____ {Owner name}

By: _____

Title: _____

This instrument was acknowledged before me on _____ (date)

by _____ (Owner)

of _____ County, Oregon. _____

Signature of Notarial Officer

My Commission Expires: _____

Exhibit “A”

Legal Description and Labeled Map

[Insert legal description and property map]

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