

Jefferson County
Board of Commissioners
Consent Agenda Request

To: Board of Commissioners
Philip Morley, County Administrator

From: Frank Gifford, Public Works Director *FG*

Agenda Date: May 16, 2011

Subject: Proposed Memorandum of Understanding with Upper Hoh Road
Interagency Working Group

Statement of Issue:

Jefferson County has been working with partner agencies in an effort to bring resources to the first twelve miles of the Upper Hoh Road, from U.S. 101 to the boundary of Olympic National Park. The Upper Hoh Road Interagency Working Group ("Working Group") includes the United States Department of the Interior, National Park Service (NPS); the United States Department of Transportation, Federal Highway Administration - Western Federal Lands Highway Division and Washington State Division (FHWA); and the Washington State Department of Transportation (WSDOT). The Working Group has drafted a proposed Memorandum of Understanding (MOU) that lays out background and objectives, statements of shared understanding, a statement of work, and other provisions. The purpose of the MOU is to encourage interagency cooperation in the long-term management of the Upper Hoh Road in order to maintain access for all road users.

Analysis/Strategic Goals/Pros & Cons:

Approximately 85% of the traffic on the Upper Hoh Road is generated by Olympic National Park visitation, with the Hoh Rain Forest generally recording between 200,000 and 300,000 visitors per year. The first 12 miles of the Upper Hoh Road is among the most difficult and expensive roadways to operate in Jefferson County and Federal participation is limited to partial reimbursement for *qualifying* emergency events. The use and environmental challenges of this road clearly point to a need extending beyond the County, particularly in an era when local resources are diminishing.

Public Works proposes that the County enter into an MOU with Working Group partners to continue progress towards securing increased assistance from and sharing certain road management responsibilities with the appropriate Federal and State agencies for the Upper Hoh Road. The other four partners in the Working Group have agreed to sign this MOU proposal dated March 18, 2011.

Fiscal Impact/Cost Benefit Analysis:

There is no financial commitment proposed in the MOU to or from the partner agencies. The MOU establishes a framework by which additional Federal and State resources may be applied to the first twelve miles of the Upper Hoh Road. The agreement is proposed to last five (5) years, which is the standard time period for MOUs that involve the National Park Service.

Since 1996, the Upper Hoh Road has required over \$6 million in emergency repairs and associated environmental mitigation. The 2012-2017 Transportation Improvement Program is anticipated to include \$2.3 in expenditures for Upper Hoh Road projects.

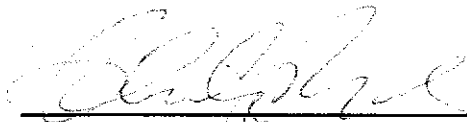
Recommendation:

The Board is requested to sign the attached five (5) originals of the MOU and return them to Public Works for further processing. Upon execution by all parties to the MOU, one (1) signed original will be returned to the Commissioners' office. The remaining four (4) originals will be distributed to the other four signatories to the MOU.

Department Contact:

Monte Reinders, P.E., County Engineer
385-9242

Reviewed By:



Philip Morley, County Administrator

5/12/14

Date

**MEMORANDUM OF UNDERSTANDING
UPPER HOH ROAD INTERAGENCY WORKING GROUP**

Agreement # G9500100074

**Memorandum of Understanding
between
The United States Department of the Interior, National Park Service;
United States Department of Transportation,
Federal Highway Administration – Western Federal Lands,
Federal Highway Administration – Washington State Division;
Washington State Department of Transportation;
and
Jefferson County**

This Memorandum of Understanding (MOU) is entered into by the United States Department of the Interior, National Park Service (NPS); the United States Department of Transportation, Federal Highway Administration – Western Federal Lands Highway Division and Washington State Division (FHWA); the Washington State Department of Transportation (WSDOT); and Jefferson County, collectively referenced as “the Parties,” for the purpose of addressing long-term management issues associated with the Upper Hoh Road, located on the Olympic Peninsula in the State of Washington.

ARTICLE I – BACKGROUND AND OBJECTIVES

The Upper Hoh Road is located along the Hoh River in several locations such that heavy storm events have caused significant damage to the roadway on a recurring basis. The Upper Hoh Road provides the only access into and out of the Hoh River valley north of the Hoh River. There are no alternate vehicular routes.

The consequence of not addressing the Upper Hoh Road’s current condition, current location, current funding availability, and current management scenario is that access via this route to landowners and to Olympic National Park is likely to be negatively impacted by temporary or longer-term road closures. An additional consequence is that potential environmental impacts are not prevented or mitigated. Response to emergency events and maintenance of the road in its current location results in the potential for adverse impacts to the Hoh River. Efforts to avoid or minimize adverse impacts frequently require costly mitigation measures for road managers that are difficult to implement.

In recognition of the Parties’ shared interest in maintaining access to the Upper Hoh Road, the Parties are collaborating in a work group to cooperatively address the management of the Upper Hoh Road from Highway 101 to the Hoh Rain Forest Visitor Center. The Upper Hoh Road is currently operated and administered by Jefferson County from milepost 0 to 12 and by the National Park Service within the boundaries of Olympic National Park from milepost 12 to 18.

The primary purpose of this MOU is to encourage interagency cooperation in the long-term management of the Upper Hoh Road in order to maintain access for local residents; businesses; private, local, state, and federal land managers; the Hoh Tribe; and visitors to the Hoh Rain Forest within Olympic National Park.

**MEMORANDUM OF UNDERSTANDING
UPPER HOH ROAD INTERAGENCY WORKING GROUP**

Agreement # G9500100074

Interagency coordination is necessary to provide continued access, protect river resources, foster cooperative relationships, and to share technical expertise. In implementing this MOU, the Parties shall emphasize quality public service, and efficient and effective expenditure of available funds.

ARTICLE II - STATEMENTS OF SHARED UNDERSTANDING

All Parties to this Memorandum of Understanding (MOU) recognize that,

1. The Upper Hoh Road is important to a wide range of stakeholders, including visitors to Olympic National Park, local residents and businesses, public and private land managers, and the Hoh Tribe.
2. Olympic National Park is a World Heritage Site and International Biosphere Reserve. Maintaining access to the Hoh Rain Forest, a well-known tourist destination for in-state and out-of-state visitors, is a priority for many stakeholders.
3. A collaborative approach to road management will help all Parties to make the most effective use of limited resources in providing ongoing vehicle access on the Upper Hoh Road.
4. A collaborative effort is needed to identify, evaluate, and prioritize necessary management actions for the road corridor from US Highway 101 to the Hoh Rain Forest Visitor Center.
5. Capital planning and project delivery, road preservation, and emergency repairs for the Upper Hoh Road are challenging for all Parties due to the difficulty of maintaining, with limited financial and staff resources, vehicle access within an active river corridor.
6. The dominant mechanism by which the Upper Hoh Road is managed – in response to emergencies – merits re-evaluation, and that the situation calls for innovative, proactive approaches to project planning, funding, and implementation.
7. Due to limitations in Jefferson County resources, a status quo arrangement for the management of the Upper Hoh Road has the potential to result in road closure and/or limited access for the public to the Hoh Rain Forest.
8. Responding to storm-related emergency events has the potential to result in adverse impacts to the Hoh River and resident fish populations.
9. Actions to avoid or minimize adverse impacts to the Hoh River and resident fish populations should be integrated, to the greatest extent possible, into ongoing road management actions.
10. A collaborative planning and analysis approach is needed to determine the feasibility of long-term road management solutions. This includes the potential to relocate all or portions of the road outside of the active river corridor, evaluating the potential for changes in jurisdiction,

**MEMORANDUM OF UNDERSTANDING
UPPER HOH ROAD INTERAGENCY WORKING GROUP**

Agreement # G9500100074

or designating the Upper Hoh Road as a special status road to provide access to additional funding sources.

11. Funding is needed to support collaborative planning and analysis for managing the Upper Hoh Road.

ARTICLE III - AUTHORITIES

NPS Authority: 16 U.S.C. § 1- 3 authorizes the National Park Service to document mutually agreed upon policies, procedures, objectives, and/or assistance relationships that do not involve funding.

Jefferson County Authority: The Interlocal Cooperation Act (Ch. 39.34 RCW) in this state contains a broad authorization for any one or more public agencies to contract with any one or more other public agencies to perform any governmental activity or service which each agency is authorized by law to perform individually. Public agency is defined very broadly as any agency, political subdivision, or unit of local government of this state. This includes municipal corporations, special purpose districts, local service districts, any agency of the state government, any agency of the United States, any Indian Tribe recognized as such by the federal government, and any political subdivision of another state.

FHWA - Western Federal Lands Highway Division Authority: 23 U.S.C. 204 authorizes the FHWA to enter into appropriate agreements with Federal agencies, States, and counties.

FHWA - Washington State Division Office Authority: Upper Hoh River Road has a functional classification as a Major Collector, so WSDOT and FHWA WA Division Office have the authority to expend Title 23 Chapter 1 FHWA funds on this route (as shown by expenditures of Emergency Relief funds (ER) in the past).

WSDOT Authority: Chapter 39.34.030 (Revised Code of Washington) authorizes WSDOT to enter into agreements with public agencies, including an agency of the United States for joint or cooperative action; see generally, Title 47 RCW for specific WSDOT legal authority.

ARTICLE IV - STATEMENT OF WORK

To the extent appropriate and feasible, as funding allows with respect to each Party's own budget or funding system, and pursuant to each Party's specific legal authority, the Parties shall carry out together the following tasks:

1. Regularly attend working group meetings to discuss, coordinate, and improve the long-term management of the Upper Hoh Road.

**MEMORANDUM OF UNDERSTANDING
UPPER HOH ROAD INTERAGENCY WORKING GROUP**

Agreement # G9500100074

2. Work in partnership, leveraging funding and personnel to provide resources for capital improvements and long-term planning for the Hoh River corridor.
3. Within the limits of each Party's respective authorities, the Parties shall coordinate the obligation of various funding mechanisms related to management of the Upper Hoh Road.
4. Cooperate in the preparation of a long-term management plan for the Upper Hoh Road to address management options including, but not limited to, the feasibility of relocating all or portions of the road outside of the active river corridor, potential changes in jurisdiction, or designation of the Upper Hoh Road as a special status road to provide access to additional funding sources.
5. Prepare and implement a road corridor management plan to ensure access to the Hoh Rain Forest, preserve road user and resident access to the road, and to protect river resources. The Parties shall coordinate planning and management for the Upper Hoh Road with each other and with stakeholders of the Upper Hoh Road.
6. In conducting planning and management activities for the Upper Hoh Road, the Parties shall consider potential impacts to the environment and disclose that consideration pursuant to the National Environmental Policy Act and the National Historic Preservation Act, as appropriate.
7. As funds allow, the Parties shall develop coordinated and standardized interagency data sets, maps, and GIS; and synthesize and report data relevant to the long-term management of the Upper Hoh Road.
8. Collect and manage data to identify conservation and protection opportunities and to inform road management decisions.
9. A primary point of contact for each Party will be established. A list of management offices and administrators will be maintained; personnel at appropriate levels of each Party who work in relation to the Upper Hoh Road will be identified.
10. Supplemental and project-specific interagency agreements to implement this MOU will be executed.
11. Attend regularly scheduled meetings for stakeholders to enhance communications and cooperation. These meetings should involve road administrators and cooperators, land managers, nonprofit partners, landowners, state agencies, and others concerned with the Upper Hoh Road.
12. Coordinate with each other to maximize public benefits, to avoid duplication of effort and public misunderstanding, and to prevent adverse impacts to the Upper Hoh Road and Hoh River resources.
13. Encourage innovative implementation of the purposes and work elements of this MOU, to the extent resources and authorities permit.

**MEMORANDUM OF UNDERSTANDING
UPPER HOH ROAD INTERAGENCY WORKING GROUP**

Agreement # G9500100074

ARTICLE V – TERM OF AGREEMENT

This MOU is executed as of the date of the Party's last signature shown below and shall be in effect for a period of five (5) years, at which time it will be subject to review, renewal, revision, or expiration. However, at the end of two (2) years, the Parties to this MOU will conduct an interim review of its language, tasks, and direction and make any necessary corrections as mutually agreeable and agreed to in writing by all Parties.

ARTICLE VI – KEY OFFICIALS

A. Key officials are essential to ensure maximum coordination and communication between the Parties and the work being performed as follows:

1. **NPS:**
Karen Gustin
Superintendent
Olympic National Park
600 E. Park Avenue
Port Angeles, WA 98362
E-mail: karen_gustin@nps.gov
Telephone: (360) 565-3004
Facsimile: (360) 565-3015

2. **FHWA-Western Federal Lands Division:**
Phyllis Chun
Planning and Program Manager
FHWA Western Federal Lands
610 E. Fifth Street
Vancouver, WA 98661
E-mail: Phyllis.chun@dot.gov
Telephone: (360) 619-7619
Facsimile: (360) 619-7846

3. **FHWA- Washington State Division**
Dean Moberg
Area Engineer
FHWA Washington Division Office
711 South Capitol Way, Suite 501
Olympia, WA 98501
E-mail: dean.moberg@dot.gov
Telephone: (360) 534-9344
Facsimile: (360) 753-9889

**MEMORANDUM OF UNDERSTANDING
UPPER HOH ROAD INTERAGENCY WORKING GROUP**

Agreement # G9500100074

4. **WSDOT**
Kevin J. Dayton
Olympic Region Administrator
5720 Capitol Blvd. SE, Tumwater, WA
PO Box 47440
Olympia, WA 98504-7440
E-mail: DaytonK@wsdot.wa.gov
Telephone: (360) 357-2605
Facsimile: (360) 357-2601
- Neal J. Campbell
Olympic Region Local Programs Engineer
5720 Capitol Blvd. SE, Tumwater, WA
PO Box 47440
Olympia, WA 98504-7440
E-mail: CampbeN@wsdot.wa.gov
Telephone: (360) 357-2666
Facsimile: (360) 357-2601

5. **Jefferson County**
County Engineer
Jefferson County Public Works
623 Sheridan St.
Port Townsend, WA 98368
Telephone: (360) 385-9160
Fax: (360) 385-9234

- B. **Communications** - Any communication regarding this Agreement will be addressed to the key officials identified in Article VI, Section A above.
- C. **Changes in Key Officials** – Permanent change in a key official requires written notice to the other Parties.

ARTICLE VII – MODIFICATION AND TERMINATION

- A. This Agreement may be modified only by a written instrument executed by all the Parties.
- B. Additional parties may be added to this MOU, provided this Agreement is modified pursuant to ARTICLE VII Section A above.

**MEMORANDUM OF UNDERSTANDING
UPPER HOH ROAD INTERAGENCY WORKING GROUP**

Agreement # G9500100074

- C. Any Party may withdraw from this MOU after sixty (60) days prior written notice to the other Parties. In the event that one or more Parties provide the other Parties with notice of its/their intention to withdraw from this MOU, the Parties will meet promptly to discuss the reasons for the notice and to try to resolve their differences.

ARTICLE VIII – SPECIAL PROVISIONS AND STANDARD CLAUSES

A. Non-Fund Obligating Document. This MOU is neither a fiscal nor a funds obligation document because it does not mandate the expenditure of any funds by any Party to this MOU. Any endeavor involving reimbursement or contribution of funds between the Parties of this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by the Parties entering into separate agreements and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Specifically, this MOU does not establish authority for noncompetitive award to the cooperator of any contract or other agreement.

B. No Member of Congress to Benefit. Pursuant to the *United States Code*, Title 41, Section 22, no member of Congress shall be admitted to any share or part of this MOU, or any benefits that may arise therefrom.

C. Participation in Similar Activities. This MOU in no way restricts any signatory from participating in similar activities with other public or private agencies, organizations, and individuals.

D. Responsibilities to the Act. Nothing in this MOU abrogates the responsibility of any land managing agency to manage its road resources according to the laws, rules, and regulations governing its management authority over such lands. This MOU does not create any obligation on any Party or any employee or representative of any Party to take any affirmative action other than those listed in Article IV above.

E. Nondiscrimination. During the performance of this MOU, the Parties agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, age, religion, disability, sex, or national origin. The Parties will take affirmative action to ensure that applicants are employed without regard to their race, color, age, religion, disability, sex, or national origin.

F. Conduct of Activities. The Parties shall handle their own activities and use their own resources, including the expenditure of their own funds, in pursuing the objectives enumerated in this MOU. In implementing this MOU, each Party will be operating under its own laws, regulations, and policies, subject to the availability of appropriated funds. While acting in furtherance of the terms and conditions of this MOU, the employees of each Party to this MOU are deemed to be acting solely on behalf of the Party that employs them and are not employees, agents or representatives of any other Party to this MOU.

**MEMORANDUM OF UNDERSTANDING
UPPER HOH ROAD INTERAGENCY WORKING GROUP**

Agreement # G9500100074

G. Existing Authority. Nothing in this MOU is intended to alter, limit, or expand any Party's statutory and regulatory authority.

H. No Enforceable Rights. This MOU does not create any substantive or procedural right that is enforceable at law or equity against the any Party to this MOU or its officers, agents, and employees.

I. Severability. If any section of this MOU is found to be unlawful or against public policy, then all the remaining sections of this MOU shall continue to be valid.

ARTICLE IX – SIGNATURES

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the Party's date last signed below.

FOR THE NATIONAL PARK SERVICE:

Signature: _____

Name: Karen Gustin

Title: Superintendent, Olympic National Park

Date: _____

FOR THE FEDERAL HIGHWAY ADMINISTRATION – WESTERN FEDERAL LANDS:

Signature: _____

Name: Clara Conner

Title: Western Federal Land Division Engineer

Date: _____

MEMORANDUM OF UNDERSTANDING
UPPER HOH ROAD INTERAGENCY WORKING GROUP

Agreement # G9500100074

**FOR THE FEDERAL HIGHWAY ADMINISTRATION – WASHINGTON STATE
DIVISION:**

Signature: _____

Name: Dan Mathis

Title: Washington Division Office Division Administrator

Date: _____

FOR THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION:

Signature: _____

Name: Kevin J. Dayton

Title: Olympic Region Administrator

Date: _____

MEMORANDUM OF UNDERSTANDING
UPPER HOH ROAD INTERAGENCY WORKING GROUP

Agreement # G9500100074

FOR JEFFERSON COUNTY:

Signature: _____

Name: John Austin

Title: Chair, Jefferson County Board of Commissioners

Date: _____

Signature: _____

Name: Phil Johnson

Title: Jefferson County Commissioner

Date: _____

Approved as to form only:

David Almon 4/6/2011
Jefferson Co. Prosecutor's Office

Signature: _____

Name: David Sullivan

Title: Jefferson County Commissioner

Date: _____