**Estuary and Salmon Restoration Program (ESRP)**

***Fee Simple and Conservation Easement Acquisition and Planning Project***

Livingston Bay Protection and Restoration Planning - #20-1461

***Statement of Work***

July 1, 2021

**Note that the project milestones and individual task costs below are estimates and subject to change.**

**PURPOSE**

**Larger Project Overview (if this agreement will fund only a portion of the overall project effort)**

The Livingston Bay Protection and Restoration Planning project area was historically a salt marsh that was formed behind and protected by a barrier beach. The project sits at the head of extensive mudflats fed by sediment from the Stillaguamish River and active, exceptional feeder bluffs to the east and west. Dike construction in the late 1800’s converted the marsh to farmland and cut the area off from Livingston Bay, effectively eliminating the habitat for use by salmonids and other aquatic species and interrupting nearshore processes and benefits provided by the estuary. This project is a coordinated effort by multiple stakeholders to acquire and permanently protect former estuarine and nearshore habitat for future site restoration and advance Puget Sound salmon recovery efforts.

Beginning in the mid-19th century, extensive conversion of Puget Sound’s nearshore occurred with river deltas and estuarine habitats suffering large losses to both extent and function. Based on an analysis by PSNERP, 53% of all tidal wetlands in Puget Sound have been lost since the late 1800’s, with over half of this loss occurring in the Whidbey sub-basin which includes the Skagit and Stillaguamish deltas and the nearby Snohomish estuary (PSNERP 2009). Other estimates of wetland loss in Puget Sound suggest even greater losses of tidal wetlands in Puget Sound since the 1850’s, with some of the greatest losses in delta wetland habitat occurring in the Skagit, Stillaguamish, and nearby Snohomish estuaries (Collins and Sheikh 2005).

Dike and levee construction and draining activities since the late 1800’s are the primary causes of much of the tidal wetland loss in the Skagit and Stillaguamish deltas. In the Skagit River estuary, one of the largest estuaries in Puget Sound, between 70 and 90% of the former estuarine marsh habitat has been lost due to previous conversion activities. Given these extensive losses of wetland habitat in the region’s major river deltas, tidally influenced estuarine habitat has become increasingly important for providing ecological functions once provided by river deltas, including feeding areas for juvenile salmonids and other fish, refuge from predators, and food production.

The Livingston Bay Protection and Restoration Planning project builds upon years of successful conservation and restoration efforts by multiple partners organizations in the Skagit and Stillaguamish deltas and Port Susan Bay (See Planning Map). More than 7,500 acres of tidelands and tidal marsh have been protected and restored by the Whidbey Camano Land Trust, The Nature Conservancy (TNC), WA Department of Fish and Wildlife (WDFW), and the Stillaguamish Tribe. The project area is contiguous with these protected lands and is the largest remaining opportunity for comprehensive estuary and wetland restoration in Island County with benefits to ESA listed Puget Sound Chinook salmon and Puget Sound steelhead.

Future project phases will be necessary to complete restoration of the former estuary at Livingston Bay. These phases will include final design, permitting, restoration implementation, and stewardship.

**Agreement Scope** (what will be achieved under THIS agreement)

The Whidbey Camano Land Trust and project partners will develop a preliminary design to restore 317 acres of critical salmon and wildlife habitat on priority lands in Livingston Bay on Camano Island and seize upon current acquisition opportunities if restoration is deemed feasible. The Land Trust will investigate the feasibility of restoring former tidal estuary and wetland habitat that is currently managed as diked farmland, and protect those lands and adjacent nearshore habitat to benefit multiple species of salmonids, including Endangered Species Act listed Puget Sound Chinook salmon and Puget Sound steelhead. The 317 acres targeted for restoration planning includes over three quarters of a mile of Livingston Bay shoreline and 25 acres of tidelands directly adjacent to over 7,500 acres of protected habitat within Port Susan Bay and the Stillaguamish River Delta. At present, at least two properties and up to 200 acres are available for acquisition. The Livingston Bay Protection and Restoration Planning project will advance process-based restoration efforts prioritized by the Puget Sound Nearshore Ecosystem Restoration Project (PSNERP) by building off of the conceptual design work already completed and securing a portion of that project footprint.

This project received funding from SRFB, PSAR, and ESRP. The SRFB/PSAR scope of work is to acquire the Leque and Livingston Bay Community Association properties. The ESRP scope of work is the same, but also includes acquiring the Roberge and/or Sherman properties and completing a preliminary design to restore critical salmon and wildlife habitat.

**GOALS & OBJECTIVES**

Clearly defined project goals and objectives

1. Pending determination of restoration feasibility (study currently underway), advance appropriate restoration scenario to permit ready, preliminary design stage.
2. Acquire fee title to the Leque and Roberge properties.
3. Acquire grant of conservation easement on Livingston Bay Community Association property, compatible with restoration design.

**FUNDING**

21-23 ESRP AWARD: $1,500,000

21-23 PSAR (2020 award from Island Lead Entity): $ 594,871

2021 SRFB (Island Lead Entity): $ 20,246

21-23 PSAR (2021 award from Island Lead Entity): $ 30,000

SPONSOR MATCH: $ 529,883 (See Funding Note below)

TOTAL PROJECT: $2,675,000

*NOTE*: The Puget Sound Acquisition and Restoration Program (PSAR) awarded $594,871 of 21-23 funds to this project through RCO project 20-1134 in 2020 to acquire the Leque Property and Livingston Bay Community Association property (this awarded amount was less than that requested). In 2021, PSAR awarded an additional $30,000 in 21-23 funds and the Salmon Recovery Funding Board awarded $20,246 of 2021 funds to RCO project 20-1134 to complete those same acquisitions. The Estuary and Salmon Restoration Program awarded $1,500,000 to this project through project 20-1461 to acquire those same properties. In addition, the ESRP award is to acquire the Roberge and/or the Sherman properties and to complete a preliminary design to restore critical salmon and wildlife habitat. These grant awards are being combined into a single contract 20-1461 for efficiency. PSAR/SRFB’s required match is $145,000, which is fully met by the ESRP award. ESRP’s required match is $1,175,000 (including some non-state funding), which is partially met by the PSAR and SRFB awards, leaving a remaining $529,883 in additional sponsor match.

**AGREEMENT MILESTONES:**

START DATE: July 1, 2021

END DATE: Work on this project must be completed by December 31, 2023

**ACQUISITION BUDGET (including match)**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Property 1 (Leque)** | **Property 2 (Roberge)** | **Property 3 (Livingston Bay Community Association)** |
| **Administration** | $15,000 | $15,000 | $15,000 |
| **Incidentals** | $55,500 |  $57,000 | $52,750 |
| **Land** | $1,180,000 | $695,000 | $25,000 |
| **TOTAL** | $1,250,500 | $767,000 | $92,750 |

**TASKS & DELIVERABLES**

*Instructions: In the tasks below, please list and describe all tasks, sub-tasks (if relevant), deliverables, and milestones.*

**Task 1**: Grant Management, Progress Reporting & PRISM Final Report

**Description:** General grant administration and management for this task includes but is not limited to maintenance of project records; submittal of payment vouchers (at least one/year), progress reports via PRISM Online (at least two/year); and submittal of final report and required deliverables via PRISM Online.

**Deliverables:**

|  |  |  |
| --- | --- | --- |
| **Number** | **Deliverable** | **Completion date** |
| **1.1** | PRISM progress reports that describe accomplishments, project status, and any delays or concerns (Submit 2/yr) | 12/1/20216/1/202212/1/20223/1/2023 |
| **1.2** | PRISM Final Report – complete data entry and narrative report describing work done, outreach accomplished, recommendations for future work | 12/31/2023 |

**Task 2**: Due Diligence (Pre-Acquisition Incidentals)

**Description:** All acquisition projects are subject to the policies and procedures in [RCO Acquisitions Manual](https://rco.wa.gov/wp-content/uploads/2019/07/Manual3.pdf) (Manual 3). The appraisal and review appraisal must be consistent with Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA). RCO’s [acquisition project toolkit for grant sponsors](https://rco.wa.gov/recreation-and-conservation-office-grants/grant-requirements/acquisition-tool-kit/) contains checklists, required acquisition documents, template letters, and example documents to help you successfully complete your acquisition project.

Attach all deliverables to PRISM and notify the ESRP Project Manager they are available for review. Provide sufficient review time prior to acquisition closing (or reimbursement, if property was purchased under waiver of retroactivity) to ensure any questions or concerns may be addressed in a timely manner.

Once negotiation is complete and all acquisition documents approved by RCO, RCO will prepare a Deed of Right for Grantee to record to protect the State of Washington’s investment in the land acquired. To create the Deed of Right, Grantee must provide the RCO grant manger the legal description for the property in Word format and a Property Map that includes:

* RCO project number and name
* Project sponsor name
* Date of the map preparation
* Adjoining streets, roads, and water bodies
* Boundary line of land protected by the Deed of Right.
* North arrow and scale

See example Property Map at <https://rco.wa.gov/wp-content/uploads/2019/07/AppToolKIt-DeedofRight.pdf>

**Deliverables:**

|  |  |  |
| --- | --- | --- |
|  |  | **Completion date** |
| **Number** | **Deliverable** | **Property 1 (Leque)** | **Property 2 (Roberge)** | **Property 3(Livingston Bay Community Association)** |
| **2.1** | Preliminary Title Report and Title Report Commitment Checklist | 12/1/2021 | 12/1/2021 | 12/1/2021 |
| **2.2** | Voluntary Acquisition Notice to Landowner | 5/1/2022 | 5/1/2022 | 5/1/2022 |
| **2.3** | Appraisal Report  | 6/1/2022 | 6/1/2022 | 6/1/2022 |
| **2.4** | Appraisal Review | 7/1/2022 | 7/1/2022 | 7/1/2022 |
| **2.5** | Just Compensation and Relocation Notice to Owner | 8/1/2022 | 8/1/2022 | 8/1/2022 |
| **2.6** | Purchase and Sale Agreement | 10/1/2022 | 10/1/2022 | 10/1/2022 |
| **2.7** | Hazardous Substances Certification and supporting Environmental Site Assessment or RCO Property Assessment Checklist | 12/1/2022 | 12/1/2022 | 12/1/2022 |
| **2.8** | Relocation Plan, if eligible displaces persons are on the property | n/a | n/a | n/a |
| **2.9** | Survey (if needed) | 2/1/2023 | 2/1/2023 | 2/1/2023 |
| **2.10** | Wetlands Inventory (if needed) | 2/1/2023 | 2/1/2023 | 2/1/2023 |
| **2.11** | Legal description and Property Map to RCO to include in Deed of Right | 1/15/2023 | 1/152023 | 1/15/2023 |
| **2.12** | RCO Waiver of Retroactivity (if acquired prior to agreement start date) | n/a | n/a | n/a |

**Task 3**: Acquisition and Post-Acquisition Incidentals

**Description:** The Grantee will develop the legal instruments to protect the property in perpetuity, complete all preparations for closing, and record the signed Deed and RCO Deed of Right for the property.

Grantee will develop a [stewardship and maintenance plan](https://rco.wa.gov/wp-content/uploads/2020/03/ESRP_AcqStewardshipPlan.docx) that, at a minimum, identifies the inherent qualities of the property; identifies landowner goals; current and desired site conditions; a scope, schedule, budget and source of funding for completion of maintenance tasks necessary to insure that project goals and objectives will be achieved; an adaptive management plan; vicinity map, site plan, and photographs. This stewardship plan may also be integrated into a restoration stewardship plan if this project includes a restoration component.

Grantee cannot begin any ground disturbing activities (included weed control, geotechnical investigation, demolition, or fencing) until RCO notifies you they have completed cultural resources consultation on your project and you have satisfied all requirements. Ground disturbance or demolition started without notification of approval will be considered a breach of the grant agreement.

*Cultural Resources Compliance*: This agreement requires compliance with Executive Order 21-02.  RCO has completed the initial consultation for this project and a cultural resources survey is required to address the acquisition area and any associated ground disturbing actions, as well address any areas slated for future development/restoration actions.  The Sponsor must submit to RCO the survey and receive from RCO a notice of cultural resources completion before any ground disturbing activities can begin.  Final payment for the acquisition will be withheld until special conditions have been satisfied. In the event archaeological or historic materials are discovered while conducting ground disturbing activities, work in the immediate vicinity must stop and the Sponsor must ensure compliance with the provisions found in this agreement.  All cultural resources work must meet reporting guidelines outlined by the Department of Archaeology and Historic Preservation.

**Anticipated Acquisition Closing Date:** (Enter Milestone for each property)

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Property 1 (Leque)** | **Property 2 (Roberge)** | **Property 3 (Livingston Bay Community Association)** |
| Sale Closing Date | 4/1/2023 | 4/1/2023 | 4/1/2023 |

**Deliverables:**

|  |  |  |
| --- | --- | --- |
|  |  | **Completion date** |
| **Number** | **Deliverable** | **Property 1 (Leque)** | **Property 2 (Roberge)** | **Property 3 (Livingston Bay Association)** |
| **3.1** | Settlement Statement with a detailed description of closing costs to RCO (if requesting escrow payment) | 3/1/2023 | 3/1/2023 | 3/1/2023 |
| **3.2** | Draft Deed to RCO (if requesting escrow payment) | 3/1/2023 | 3/1/2023 | 3/1/2023 |
| **3.3** | Recorded Deed | 4/1/2023 | 4/1/2023 | 4/1/2023 |
| **3.4** | Recorded Deed of Right | 4/1/2023 | 4/1/2023 | 4/1/2023 |
| **3.5** | Recorded Legal Survey and Boundary Line Adjustment (if needed) | 4/1/2023 | 4/1/2023 | 4/1/2023 |
| **3.6** | Final Title Insurance Policy | 5/1/2023 | 5/1/2023 | 5/1/2023 |
| **3.7** | Cultural Resources Survey (to inform planned future restoration) | 6/1/2023 | 6/1/2023 | 6/1/2023 |
| **3.8** | ESRP/PSAR funding acknowledgement sign posted on site | 7/1/2023 | 7/1/2023 | 7/1/2023 |
| **3.9** | Final Stewardship & Maintenance Plan (see above) | 7/1/2023 | 7/1/2023 | 7/1/2023 |
| **3.10** | Attach at least 3 JPG photos of property to PRISM | 7/1/2023 | 7/1/2023 | 7/1/2023 |
| **3.11** | Demolition of structures that are not considered necessary to implement the project or are not considered a compatible or allowable use (if relevant) | n/a | n/a | n/a |
| **3.12** | Noxious weed control (if needed) | n/a | n/a | n/a |
| **3.13** | Fencing & Gates (if needed) | n/a | n/a | n/a |

**Task 4**: Restoration Design Development

**Description:**

Whidbey Camano Land Trust and project partners will develop a 60% preliminary design (permit-ready plans) for restoration of formal tidal flow processes and critical estuarine habitat for the benefit of salmon and wildlife in Livingston Bay by building off the conceptual design work already completed. Anticipated tasks include GIS analysis, CAD drafting, topographic surveys, geo-technical investigation, soil assessments, salt intrusion analysis, existing dike assessments, watershed drainage performance, water quality assessment, fish use analysis, waterfowl analysis, vegetation surveys, and wetland reports. In addition, the Land Trust will complete a Cultural Resources survey to inform future design options.

Preliminary Design Deliverables:

Submit the following deliverables to the RCO grants manager along with any assessment and feasibility deliverables funded in the scope of work.

* Description of the project site and the problems within the context of salmon recovery.
* Identification of specific goals and objectives to address the problems.
* Identification of project scenario (from the restoration feasibility study) that will achieve the project objectives. Each design alternative must include a description of the design and a plan view drawing of existing site conditions and the proposed project on accurately scaled site plans. The plan view drawing must include an area/location map, property boundaries (either surveyed or approximated based on assessor’s data), landownership, roads or other infrastructure as appropriate, scale, north arrow, water bodies and direction of flow, bank-full width or mean high water line for marine waters, and approximate dimensions of proposed elements.
* Evaluation and discussion of stakeholder comments and the pros and cons of each alternative.
* Selection of the preferred alternative(s).
* Construction cost estimate of the preferred alternative(s)

**Subtasks and timeline, as needed (steps to carry out the task):**

* **May 31, 2022**: Check in meeting with project partners and funders to verify concurrence that meaningful restoration is feasible before proceeding with acquisition spending in earnest**.**

**Deliverables:**

|  |  |  |
| --- | --- | --- |
| **Number** | **Deliverable** | **Completion date** |
| **4.1** | Present draft feasibility study report, including conceptual design documents (multiple scenarios based on acquisition outcomes) and alternatives analysis to stakeholders and ESRP/RCO staff | December 31, 2022 |
| **4.2** | Final preliminary design documents attached to PRISM | June 1, 2023 |
| **4.3** | Cultural resources survey attached to PRISM | June 1, 2023 |

**Estimated Cost (including match): $564,750**