

**WHATCOM COUNTY  
PUBLIC WORKS DEPARTMENT**

**ELIZABETH KOSA  
DIRECTOR**



**NATURAL RESOURCES**  
**Gary Stoyka**  
**Natural Resources Program Manager**  
322 N Commercial, 2<sup>nd</sup> Floor  
Bellingham, WA 98225  
Phone: 360-778-6200  
Fax: 360-778-6201

**MEMORANDUM**

**TO:** The Honorable Satpal Singh Sidhu, Whatcom County Executive and the Honorable Members of the Whatcom County Council

**FROM:** Elizabeth Kosa, Public Works Director  
Gary Stoyka, Natural Resources Manager 

**DATE:** June 5, 2023

**RE: Memorandum of Agreement with Nooksack Indian Tribe, Lummi Nation, and Washington Department of Fish and Wildlife with Respect to Remediation of Fish Barrier Culverts**

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**Requested Action**

Public Works respectfully requests that the County Executive, with County Council approval, enter into a Memorandum of Agreement between the County, Nooksack Indian Tribe, Lummi Nation, and Washington Department of Fish and Wildlife to guide remediation of County culverts that block salmon passage.

**Background and Purpose**

Public Works has developed a Memorandum of Agreement (MOA) with the Nooksack Indian Tribe, Lummi Nation, and Washington Department of Fish and Wildlife (Co-Managers) to collaboratively prioritize and create a schedule for remediating culverts owned by Whatcom County that block or partially block anadromous salmon passage and to secure funding sources as they become available. The MOA provides for:

- the establishment of a technical work group and a policy group composed of representatives from each entity;
- the review and update, as necessary, of the existing inventory of County owned culverts;
- the development of criteria to plan and prioritize barrier remediation;
- establishing a priority list and schedule for barrier remediation;
- a means to ensure that future culverts pass all species of salmon at all life stages where the fish would naturally seek passage; and,
- Co-manager technical support for project development and pursuing outside funding for design and construction.

The Co-Manager support provided under this MOA will help Public Works to strategically focus existing staff and capital resources to provide the greatest benefit to salmon and will help define how to best grow the Public Works culvert barrier remediation program in the future.

**Funding Amount and Source**

No funding is involved with this MOA. Future grant funds or additional service requests related to salmon barrier remediation will be brought to Council separately for approval as they occur.

Please contact Elizabeth Kosa at extension 6282 if you have any questions or concerns regarding the terms of this agreement.

# **MEMORANDUM OF AGREEMENT AMONG WHATCOM COUNTY, THE WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, THE LUMMI NATION AND THE NOOKSACK INDIAN TRIBE**

Whatcom County has the legal right and legal obligation to design, to construct, and to maintain a road network, including culverts and other passageways over streams, for its residents. This Memorandum of Agreement is intended solely to address remediation of anadromous salmon passage that may be blocked or partially blocked by culverts owned by Whatcom County. The parties to this Memorandum of Agreement hereby agree as follows:

## **PURPOSE**

The purpose of this Memorandum of Agreement is to collaboratively prioritize and create a schedule for remediating culverts owned by Whatcom County that block or partially block anadromous salmon passage and secure funding sources as they become available.

## **PARTIES TO THE AGREEMENT**

The parties to this agreement are the Lummi Nation, Whatcom County, the Nooksack Indian Tribe, and the Washington Department of Fish and Wildlife. The Lummi Nation and Nooksack Indian Tribe designate their respective Natural Resource Departments as the leads for agreement implementation. Whatcom County designates their Public Works Department as the lead for agreement implementation. Washington Department of Fish and Wildlife designates the Habitat Program as the lead for agreement implementation.

1. As used in this Memorandum of Agreement, the word "culvert" shall mean any structure, other than a full-span bridge, that is constructed to convey water beneath a roadway, footpath or other infrastructure and shall include associated fishways.
2. The word "salmon" shall mean any of the seven species of anadromous salmonids of the genus *Oncorhynchus*, commonly known as chinook, chum, coho, pink, and sockeye salmon, and steelhead and (sea-run) cutthroat

trout. Anadromous char or bull trout of the genus *Salvelinus*, are also included.

3. "County" shall mean Whatcom County, a municipal corporation created and operated under the laws of the State of Washington.
4. "The Nation" or "Lummi" shall mean the Lummi Nation, a federally recognized tribe located in Whatcom County.
5. "The Tribe" shall mean the Nooksack Indian Tribe, a federally recognized tribe located in Whatcom County.
6. "WDFW" shall mean the Washington Department of Fish and Wildlife, an agency of the State of Washington.

## **OBJECTIVES**

The objectives of this Memorandum of Agreement are:

1. To establish an Interagency Culvert Work Group (ICWG) composed of staff from the entities operating under this agreement and tasked with performing the tasks identified in the sections below. Recommendations of this work group will be submitted to authorized policy level representatives of the parties to the Agreement for their review and approval under a subsequent implementation agreement, as indicated below;
2. To establish an Interagency Culvert Policy Group (Policy Group) composed of the following: Whatcom County Executive or their designee; Lummi Indian Business Council Chair or their designee; Nooksack Indian Tribe Council Chair, or their designee; Washington Department of Fish and Wildlife Director or their designee. The policy group will provide policy guidance to the ICWG as necessary and approve ICWG recommendations and work products as described below.
3. To use the best available science and other information to review and update the inventory of culverts owned by Whatcom County that may block salmon passage. Best available science may include, but is not limited to, WDFW's Fish Passage Barrier and Surface Water Diversion Screening Manual assessment criteria;
4. To develop resource-based criteria, including resource-based goals, climate change considerations, and species criteria, that will be used in planning and prioritizing remediation of full or partial salmon passage barriers;
5. To develop a priority of remediation efforts using resource-based goals or other criteria agreed to by the work group and affirmed by policy representatives;
6. To establish a schedule for remediation efforts by the ICWG that is consistent with the salmon recovery goals presented in the 2005 WRIA 1 Salmonid Recovery Plan and subsequent updates to that plan. The schedule for

remediation will be approved by the Policy Group for this Agreement. The parties to this Memorandum of Agreement recognize that availability of resources, changes in policy or legislation may impact the schedule;

7. To ensure that future culverts pass all species of salmon at all life stages where the fish would naturally seek passage.

The foregoing objectives are not intended to and do not create any legal rights or liabilities for or against any party to this Memorandum of Agreement.

The parties to this agreement commit, to the best of their abilities, to:

1. Provide support as needed to review and determine updates that may be necessary to the current inventory ("the Inventory") **within six months of the date of final execution** of this Memorandum of Agreement. The "inventory" is the WDFW Fish Passage map and database. All County-owned anadromous fish passage barrier culvert crossings are to be included in the inventory review. A schedule for additional inventory updates that extends beyond the initial six months may be necessary depending on the resources available to conduct assessments and the number of sites determined to need assessment and inventory.
2. Make ongoing efforts to monitor and reassess culverts under County-owned roads that become partial or full barriers to salmon passage due to changed stream conditions after the date of final execution of this Memorandum of Agreement. Such assessment and identification shall be made within a reasonable time thereafter.
3. Collaborate on pre-application concurrence to affirm key field measures in support of in-progress and planned County barrier remediations, such as stream bankfull width, that are essential to project design, permitting and materials orders.
4. Collaborate to develop a prioritization plan **within 6 months following the completion of the inventory effort outlined in** this Memorandum of Agreement. This timeline will not affect the schedule of projects already underway at the County. The prioritization plan will be used to inform the schedule of remediation efforts at culverts identified in this agreement. This prioritization plan will be reviewed by the Policy Group under this Agreement for their approval.
5. Confer and agree on a proposed schedule for implementation efforts based on meeting resource-based goals or other criteria in a reasonable period of

time. The proposed schedule will be submitted by the ICWG to the Policy Group for review and approval.

6. Collaborate as needed to evaluate possible remediation designs and associated costs.
7. Collaborate and provide technical support as needed and as available to obtain necessary regulatory permissions for any remediation efforts agreed upon by the parties to the Memorandum of Agreement.
8. Provide support and collaborate as needed and as available to obtain necessary funding for remediation efforts as agreed upon by the parties to this Memorandum of Agreement.
9. Perform an annual check-in with the Policy Group to monitor the implementation of the Memorandum of Agreement and evaluate whether efforts to provide salmon passage at County owned barrier culverts are effective in meeting the standards of this Memorandum of Agreement.

It is the intent of the parties to secure funding for remediation efforts jointly and individually and upon doing so one of the parties may be selected as the financial lead for receipt and disbursement of funds, as later agreed upon by the parties to this Memorandum of Agreement.

Once the parties agree on an inventory, resource-based goals, and prioritization plan of culverts as defined above, the parties shall enter into a separate implementation agreement, if necessary, or amend the existing agreement to include an implementation plan that will govern the substance and priority of remediation efforts as agreed upon by the parties to this Memorandum of Agreement.

1. Decisions shall be based on the best available information.
2. Decisions shall be made by consensus of all parties to the Memorandum of Agreement

## **TERMINATION**

Any party to this Memorandum of Agreement may terminate its participation with 30 days written notice of intent to terminate to all other parties to this Memorandum of Agreement.

No amendment or alteration of the Memorandum of Agreement shall arise by implication, course of conduct, or change in state, tribal or federal law. This Memorandum of Agreement may be altered only by a subsequent written agreement signed by all parties, expressly stating the parties' intention to amend this Memorandum of Agreement.

## LIABILITIES/ RIGHTS

Nothing in this Memorandum of Agreement shall be interpreted in any manner to create any rights of liabilities for or against any party hereto. This Agreement is entered into by the parties in a good faith effort to work cooperatively to improve and to maintain salmon passage through culverts owned by Whatcom County and is not entered into in order to create any legal rights or liabilities.

DocuSigned by:  
**By:** Merle Jefferson 6/26/2023  
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Merle Jefferson, Natural Resources Director Date

Lummi Indian Business Council

DocuSigned by:  
**By:** RoseMary LaClair 7/3/2023  
921D8F45A8874E1...

RoseMary LaClair, Chair Date

Nooksack Tribal Council

DocuSigned by:  
**By:** Satpal Sidhu 7/11/2023  
1192C7C18B664E3...

Satpal Singh Sidhu, Executive Date

Whatcom County

DocuSigned by:  
**By:** Brendan Brokes 7/11/2023  
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Brendan Brokes, Regional Director Date

Washington Department of Fish and Wildlife