

**MEMORANDUM OF UNDERSTANDING
AMONG
CITY OF EDMONDS
AND
LOWER PERRINVILLE REACH PROPERTY OWNERS**

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and among the City of Edmonds, Washington (City), and the Lower Perrinville Reach Property Owners (Owners), collectively referred to as the "Parties."

1. PURPOSE. The purpose of this MOU is to allow the Parties to cooperate more fully toward flood mitigation and channel realignment for the lowermost reach of Perrinville Creek and to lay a foundation for compromise and resolution of the Parties' disputes concerning those subjects.

2. BACKGROUND.

2.1 Perrinville Creek is highly modified between Talbot Road and Puget Sound. As a result of road and railroad construction, as well as residential development, the historical channel corridor has been narrowed and rerouted through the area of interest. Undersized culverts under the BNSF railroad and the Talbot Road crossings, as well as the stream channel alignment in the lowermost reach, impact efficient transport of water, sediment, and wood, as well as limit fish passage. Since the downstream BNSF culvert is not large enough to convey all creek flows during high flow events, the City constructed a high flow flood diversion structure and associated piping in the 1990s to reduce potential flooding of Owners' properties. Since that time, and due to the high sediment load in Perrinville Creek, the City has needed to continually remove sediment at the diversion structure to keep it functioning and prevent the downstream channel from completely filling in with sediment.

2.2 As has happened before, recent high flood events overwhelmed the system and sediment made it past the diversion structure trap and completely filled in the channel between the diversion and the BNSF crossing. Since that time, the City has routed 100% of the creek flow into the diversion structure and removed sediment from the structure on at least an annual basis. This condition is not sustainable as it prevents fish access to Perrinville Creek.

2.3 The City and the Owners (Flynn, McLaughlin, and Robinson) are committed to work together on restoring the creek to a new channel alignment between the crossings at Talbot Road and the BNSF railroad crossing. Among the goals of the proposed channel relocation and restoration are to improve sediment transport, improve fish passage and fish habitat, and reduce flooding. The City and the Owners need to work together to achieve the vision. The MOU describes the necessary steps to implement said vision.

2.4 Parties, other than the City and Owners, needed to achieve successful completion of the vision include BNSF, the Tulalip Tribes, and the Washington Department of Fish and Wildlife (WDFW).

2.5 WDFW issues an HPA permit that allows the City to maintain the diversion structure. The HPA permit needs to be renewed so that such maintenance can continue at least until BNSF builds a fish passable structure under the railroad tracks. The Parties' cooperation is critical to their efforts to convince WDFW to renew the permit.

3. UNDERSTANDINGS.

3.1 Provided that it has the requisite HPA permit, the City will maintain and remove sediment at the diversion structure to keep it functional until a new fish passable bridge or box culvert is constructed under the BNSF tracks.

- (a) The current structures are undersized to carry the high storm flows, and this causes excess debris and sediment accumulation at the Talbot Rd culvert and at the diversion structure which require significant maintenance work by the City's storm drain operations crew to keep the structures in the channel functioning properly. The threat of flooding to Owners' properties is elevated by the reduced creek capacity on Owners' properties and due to sediment and undersized culverts.
- (b) Access: Ideally the maintenance is performed when there is no or low flows in the creek; however, actions to prevent the clogging of the structures may require the City to address the need even if it is outside of workday hours and higher flow conditions.
- (c) Activity: Current work plans include storm drain preparation work before the rainy season and approximately daily inspection during any rain event. Crews will evaluate the environment and, if they consider it safe, will work to remove any debris or sediments to prevent flooding of the adjacent properties.
- (d) In addition, to prevent work under hazardous conditions, the City will work with Owners to investigate possible alternatives to protect the properties during high rain events.
- (e) Owners understand that there are many stormwater drainage structures that require the City's attention during high rain events and that, while the City aims to keep all of them functioning, the City is not making any special assurances with respect to maintenance of the diversion structure or the Talbot Road crossing.

3.2 The Owners and the City will continue to cooperate so that:

- (a) WDFW is persuaded to renew the HPA permit that allows maintenance of the diversion structure, at least until BNSF builds a fish-passable structure under the railroad tracks; and
- (b) The design for the City's portion of the work (channel realignment, fish-passable structure at Talbot Road, and eventual removal of the diversion structure, once rendered obsolete by the BNSF project) continues to progress.

3.3 The Parties will cooperate with respect to the necessary realignment of Perrinville Creek. The Parties understand that a new realigned channel alignment will extend from a point upstream of the diversion structure all the way down to the stream mouth. The Parties will use onsite staking and illustrative rendering of the new realigned channel to reach agreement. The Parties will agree upon the new channel alignment by April 30, 2024, with the understanding that their agreement will also need concurrence from WDFW and interested tribes before it can be implemented.

3.4 The Parties understand that it will eventually be necessary to abandon the existing stream channel downstream of the diversion structure, which passes through the McLaughlin and Robinson properties.

3.5 The City will continue to apply for grants and other funding methods to finance the construction of the project.

3.6 This MOU does not contain a cost allocation among the Parties for the work that is contemplated. The Parties anticipate that that will be the subject of a future agreement.

4. PROPOSED PATHWAY FORWARD.

4.1 The City has worked with an engineering firm (ESA) to develop multiple alternatives to restore the stream channel to a position (or alignment) that will provide a long-term sustainable creek channel that should no longer require sediment management or high flow diversion. This approach would also be contingent upon the replacement of the current culvert underneath the BNSF railroad with a properly sized bridge or box culvert.

- 4.2 The proposed final condition of the reach would include the following elements:
- (a) New fish-passable crossing of Talbot Road
 - (b) Removal or modification of the diversion system

- (c) New channel alignment extending from a point upstream of the diversion structure down to the stream mouth.
- (d) Abandoning and landscaping the current stream channel downstream of the diversion on the McLaughlin and Robinson properties.
- (e) New fish-passable crossing of the BNSF Railroad

4.3 Currently, the Tulalip Tribes is working with BNSF to seek funding for the BNSF crossing replacement. The City is advancing the design of the stream channel work and Talbot Road crossing replacement.

4.4 For the City, the Owners, and their design team to move forward, the following milestones would need to be achieved:

- (a) City and Owners agree upon final alignment/position of the creek from the diversion downstream to the railroad.
- (b) WDFW and Tulalip Tribes concur on final alignment of creek.
- (c) WDFW allows continued operation and maintenance of the diversion structure in its current condition until replacement of the BNSF crossing and construction of restored stream channel.
- (d) Design progresses.
- (e) BNSF, Tulalip Tribes, and the City continue to apply and receive grants and other funding methods to help with the construction of the project.
- (f) BNSF crossing gets replaced as designed.
- (g) Stream channel grading project completed.
- (h) Landscape restored in prior channel areas.
- (i) Removal of diversion structure if deemed feasible.
- (j) Talbot Road crossing replaced as designed.

4.5 WDFW would renew the HPA for two years and would reserve the right to extend the HPA if it determines that progress for the items above continues at an acceptable pace. If WDFW determines that adequate progress is not being made and the HPA expires, the City and Owners would need to return creek flows to the surface, as required by WDFW, prior to the expiration of the HPA in 2026 (or later if the permit expiration is extended). The City would provide to WDFW the information needed for the HPA renewal and potential extension, including a comprehensive barrier removal and creek restoration plan, if needed.

5. OTHER PARTIES. The Parties recognize that certain entities, such as various interested tribes and the Washington Department of Fish & Wildlife (WDFW), may have legal, regulatory, financial, or other oversight obligations with respect to the Parties' Lower Perrinville Creek objectives.

6. FUNCTION OF MOU.

6.1 NONBINDING: The Parties agree that nothing in this MOU creates any legal or financial obligations for the Parties, except as stated in subsection 6.4 below. The MOU shall not provide a basis for any cause of action among the Parties.

6.2 AMENDMENT: The Parties understand and agree that this MOU may be amended by agreement of both Parties.

6.3 TERMINATION: The Parties understand and agree that this MOU may be terminated in full by either party by written notice to the other.

6.4 BINDING WITH RESPECT TO ER 408: This MOU shall not be admissible to prove liability for or invalidity of any claim among the Parties arising out of the facts that gave rise to the MOU. The statements contained in this MOU are made in the spirit of compromise and shall not be admissible to prove facts in any subsequent dispute that may be litigated among the parties. The Parties intend this subsection 6.4 to be binding upon the Parties in any subsequent litigation even though the remainder of the document is nonbinding.

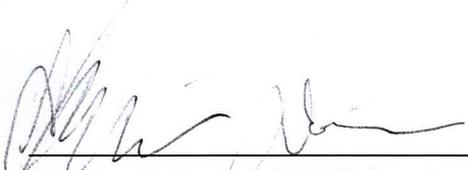
The undersigned hereto, having read this MEMORANDUM OF UNDERSTANDING do agree that it represents their understandings regarding the work to be done toward flood mitigation and channel realignment for the lowermost reach of Perrinville Creek.

DocuSigned by:
Jacque McLaughlin 3/29/2024
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Jacque McLaughlin, 8235 Talbot Road, Owner date

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Dorothy Robinson, 8307 Talbot Road, Owner

3-19-24
date


William Robinson, 8307 Talbot Road, Owner

3/15/24
date

DocuSigned by:

F10758AAA7E0463...
Mike Rosen, Mayor, City of Edmonds

4/10/2024
date