

After Recording Return to:
Mason County Commissioners

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE SKOKOMISH INDIAN TRIBE, PUBLIC UTILITY
DISTRICT NO. #1, AND MASON COUNTY FOR THE IMPROVEMENT
AND PROTECTION OF THE WATER QUALITY OF HOOD CANAL**

I. INTRODUCTION AND PURPOSE:

This 'Memorandum of Understanding' (MOU) is made, voluntarily agreed upon, and entered into this 31st day August, 2006, between the Skokomish Indian Tribe (hereinafter referred to as 'The Tribe'), Public Utility District #1 (hereinafter referred to as 'PUD #1'), and Mason County, a subdivision of the State of Washington (hereinafter referred to as 'The County'). The three, above-cited entities recognize the need to work in a joint effort to protect the public health, particularly the water quality of the lower Hood Canal. Each government entity further recognizes the necessity of improving proper sewage disposal as a principal tool to improving and maintaining the Hood Canal water quality at a healthy level and protecting marine and near-shore resources. The three, above-cited entities also understand they must work in collaboration to formulate a comprehensive strategy to develop the necessary planning framework to construct and manage the sewerage and wastewater works required for improving and maintaining the water quality of the Hood Canal. This agreement enumerates the understandings of the three, above-cited entities. This agreement also sets forth the responsibilities each entity must undertake to ensure wastewater systems are planned, developed, and properly managed and maintained in the Hoodspout Rural Activity Center (RAC), within the Potlatch Park and Minerva Beach areas within the boundaries of the Skokomish Indian Reservation and other areas within the Skokomish Indian Reservation all located within Mason County.

II. AUTHORITY:

This Memorandum of Understanding involving the three, above-cited government entities is made as a result of dire concern for the water quality of the lower Hood Canal, which has been targeted by the Washington State Legislature as 'Aquatic Rehabilitation Zone No. 1' (A.R.Z. No. 1) in 2005. The three entities of this agreement realize the significance of this designation and the need for immediate action to cure

water quality issues plaguing the Hood Canal. Further, the three entities privy to this agreement place great significance on and in full support of the public policy intended and addressed by the Revised Code of Washington (R.C.W.) 90.48, 90.54, 40 C.F.R. 131.12 and Washington Administrative Code (W.A.C.) 173-201A regarding water quality standards for surface waters. In the present matter, this Memorandum is made to address specific water quality issues plaguing the State Waters of the lower Hood Canal. The entities involved in this Memorandum support the pronouncement made in R.C.W. 90.48 as the basis of the intent of this Memorandum of Understanding:

It is declared to be the public policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington. Consistent with this policy, the state of Washington will exercise its powers, as fully and as effectively as possible, to retain and secure high quality for all waters of the state. The state of Washington in recognition of the federal government's interest in the quality of the navigable waters of the United States, of which certain portions thereof are within the jurisdictional limits of this state, proclaims a public policy of working cooperatively with the federal government in a joint effort to extinguish the sources of water quality degradation, while at the same time preserving and vigorously exercising state powers to insure that present and future standards of water quality within the state shall be determined by the citizenry, through and by the efforts of state government, of the state of Washington. (R.C.W. 90.48.010).

The entities to this agreement further support the goals expressed in the Skokomish Tribal Code (S.T.C.) 6.03.003:

- a) To protect the natural resources of the Skokomish Reservation from contamination, pollution and other degradation;
- b) To protect and enhance the habitat of all types of fish, shellfish, and wildlife resources, particularly the Skokomish River estuary and associated wetlands that are critically important components of the ecosystem which support fish and shellfish resources;
- c) To minimize the adverse impacts that would result from locating developments in environmentally sensitive areas;
- d) To preserve the open, rural environment that has been traditional for Skokomish Indians; and

- e) To allow sufficient development within this natural environment to enable all Skokomish families who desire housing and public services to obtain them.

III. UNDERSTANDINGS AND RESPONSIBILITIES:

- A. The Skokomish Tribe, PUD No. #1, and Mason County share serious concerns about wastewater impacts on public health and marine resources of the lower Hood Canal in the region of the Skokomish Reservation through the Hoodport area of Mason County immediately adjacent the Hood Canal. The Canal is identified as a waterway of Statewide Significance within the State of Washington and as an arm of Puget Sound as part of an estuary of national significance. All entities of this agreement are committed to urgent and immediate action to improve the present, dire situation of the water quality of the lower Hood Canal.
- B. The Skokomish Tribe, PUD #1, and Mason County are the government entities best positioned to: 1) Develop area planning strategies; 2) Take immediate action to assure public health protection via addressing water quality concerns; and 3) Monitor water quality conditions as a part of this agreement; 4) Further, the above-cited entities are also positioned to ensure the compatibility of different sub-systems in the larger planning area of Mason County and the State of Washington and the federal government as related to the Skokomish Indian Reservation; & 5) Ensure the long-term operation and maintenance of the wastewater facilities involved in this project.
- C. The Skokomish Tribe, PUD #1, and Mason County are committed to a collaborative approach for addressing wastewater impacts on public health marine resource protection and water quality in the lower Hood Canal region cited in 'Section III: Subsection A' of this agreement.
- D. The 'Wastewater Management Alternatives Analysis' report prepared by Gray and Osbourne is accepted as the agreed upon and the appropriate guiding report for directing the work necessary to begin improving the water quality of lower Hood Canal in the area described by 'Section III: Subsection A' of this agreement.
- E. Each entity to this agreement understands a central treatment plant for the Hoodport to Skokomish region may be possible, reliable, and environmentally effective. However, each entity also understands such a treatment plant would also be very costly and difficult to reconcile/coordinate with local land use plans, growth management laws, other applicable environmental laws and regulations for the State of Washington, the United States and the Skokomish Tribe.

- F.** Each entity of this agreement understands and acknowledges a multiple wastewater management approach (small treatment plants, clustered and enhanced on-site systems, managed on-site systems, pilot or demonstration projects) may be the best means of improving and maintaining water quality in the lower Hood Canal area described in this agreement. Such multiple wastewater approaches include tailoring the approaches to specific local conditions in order to protect the public health by improving and maintaining water quality. Further, such multiple wastewater approaches can be implemented quickly under all applicable local, state, and federal laws.
- G.** Mason County, in particular its Board of Health, is moving forward to develop and implement an enhanced on-site wastewater management program to protect public health sensitive and marine areas in a manner intended to be consistent with new state legislation and forthcoming agency rules.
- H.** The three most densely developed neighborhoods; 1) Hoodspport; 2) Potlatch/Minerva Beach area; and 3) the Skokomish Indian Reservation are in the most urgent need of wastewater management solutions and can be considered initial individual planning areas.
- I.** Assignment of responsibilities for planning, designing, and implementing appropriate strategies and developing suitable funding for these activities is a critical first step which needs to be addressed first and foremost.
- J.** Sufficient funding exists now to start with preliminary planning, design, and some implementation while seeking additional funds to complete wastewater management solution implementation.
- K.** Full commitment exists currently by all entities to this memorandum to plan, design, and implement and operate wastewater solutions in all three planning areas although work schedules and completion dates may vary.
- L.** Full commitment exists currently by all entities to this memorandum to involve the affected public in meaningful ways at critical steps in the process for all the planning work in the areas subject to this agreement.
- M.** Designing, implementing, and operating wastewater management solutions should, to the fullest extent possible, rely on uniform engineering standards and compatible approaches so as to be as efficient as possible.
- N.** Determining these assignments requires preliminary study before agreement can be reached on near and long-term responsibilities.

- O. A uniform, master strategy consisting of the wastewater management solutions, including phasing, cost estimates, methods of financing, and any facility management shall be approved by each of the entities privy to this MOU prior to being implemented.

IV. REPORTS

The 'Wastewater Management Alternatives Analysis' report prepared by Gray and Osbourne is accepted as the agreed upon and the appropriate guiding report for directing the work necessary to begin improving the water quality of lower Hood Canal in the area described by 'Section III: Subsection A' of this agreement. The County through use of the existing EPA- State/Tribal Assistance (STAG) grant will pay all costs for the guiding report and associated documentation.

In addition, the County will facilitate the work effort through a separate, executed professional services contract with Art O'Neil and Associates, hired to address and resolve wastewater management, including sewage, concerns for the County.

V. FUNDING:

Each entity privy to this MOU intends to work towards providing adequate funding, whether by grant or otherwise, to help assist in bearing the cost as each entity sees fit and economically feasible to do so. Funding of the different multiple wastewater management approaches shall be paid by each entity capable to do so at the time whether through grants or other means. The exact detailing of such costs and parties responsible for such costs shall be specified during the initial planning strategy stage so all funding issues are resolved prior to the commencement of work as agreed upon by the parties in writing via future agreements to be negotiated and finalized. All funding issues must be resolved to the full satisfaction of all three entities engaging and agreeing to this Memorandum of Understanding prior any party becoming legally obligated to provide such funding.

VI. OTHER PROVISIONS:

- A. Amendment: This agreement may be amended at any time by mutual written agreement of all, three parties.
- B. Liability/Hold harmless/indemnification: Each party shall be responsible for its own liability arising from its respective acts or omissions. Each party shall be liable and responsible for the consequence of any negligent or wrongful act or failure to act on the part of itself and its officers and employees. No party privy to this MOU agrees to assume liability for the others, or defend the other parties from the other party's negligent acts or omissions. No party privy to this MOU shall seek damages or any other remedy from the other parties for the consequences of any act or omission of any person, firm or corporation not party to this Agreement.

- C. Duration and Termination: This Memorandum of Understanding shall become effective commencing at the time of the signing by the final party to this MOU. This agreement shall continue until otherwise modified or terminated. Modification will occur only with mutual and written consent of all parties privy to this MOU. Termination may be pursuant written notice to the other entities, and shall be effective upon receipt of such written notice by the other entities, or within three (3) days of mailing such notice, whichever comes first. Upon termination, property acquired shall be the property of the entity purchasing it and that entity may hold or sell the property as it deems fit. The parties agree this MOU should be reviewed at least every five (5) years.
- D. Implementation: A Master strategy consisting of the wastewater management solutions, including phasing, cost estimates, methods of financing, and any facility management shall be approved by each of the parties privy to this MOU prior to being implemented.
- E. Non-waiver of rights. The parties agree the excuse or forgiveness of performance, or waiver of any provisions(s) of this Agreement does not constitute a waiver of such provisions(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this agreement at a later time.
- F. Joint Technical Advisory Board: There shall be a Joint Technical Advisory Board, which shall consist of: (1) One duly authorized representative from P.U.D. No. 1; (2) One duly authorized representative from the Skokomish Indian Tribe; and (3) the Director of the Department of Community Development for Mason County. This Joint Technical Advisory Board shall be responsible for administering any joint and cooperative undertakings originating from this agreement. Any action of the Joint Technical Advisory Board shall be decided by majority of the Joint Board. This Advisory Board may adopt rules of procedure, as they deem fit.
- G. Regular Meetings: The parties to this agreement, through authorized representatives, agree to meet at a minimum of at least quarterly (four times per year), to assess the operating efficiency of this project to ensure the highest compatibility with the goals and intentions pronounced by this agreement. These meetings consisting of duly appointed representatives shall occur separate and distinct from the meetings involving the Joint Technical Advisory Board.

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- H. Notices: Notices shall to the other party shall be sufficient if delivered personally, or mailed, to the following representatives:

MASON COUNTY CONTACT INFORMATION:

Clerk of the Board
Mason County Board of Commissioners
411 North Fifth Street
Shelton, WA 98584

SKOKOMOSH TRIBE CONTACT INFORMATION:

Darlyn Warren, Executive Secretary
Skokomish Tribal Council
N. 80 Tribal Center Road
Skokomish Nation, WA 98584

PUBLIC UTILITY DISTRICT NO. 1 CONTACT INFORMATION:

Richard Wilson, Manager
PUD No. 1 of Mason County
N. 21971 Hwy. 101
Shelton, WA 98584

- I. Severability. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the agreement did not contain the particular provision held to be invalid.
- J. Authority: Each entity to this agreement represents to the others that the undersigned of each entity signing on behalf of the entity represented has the requisite authority to into this MOU.
- K. Further Obligation: ~~The entities to this MOU recognize there does not exist~~ any obligation of any entity into further agreement and the obligation contained herein represent the only obligation any entity has to the other parties privy to this MOU concerning the subject matter of this MOU.
- L. Entire agreement: The parties agree this MOU is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this MOU are specifically excluded.

This 'MEMORANDUM OF UNDERSTANDING' (MOU) is made between the Skokomish Indian Tribe, Mason County, and Public Utility District (P.U.D.) Number One:

Mason County

Dated this 31st day of August, 2006.



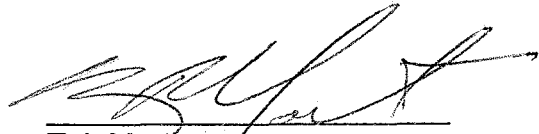
Lynda Ring Erickson, Chair
On Behalf of Mason County

Attest:

Approved as to form:



Becky Rogers
Clerk of the Board
For the Mason County Commissioners



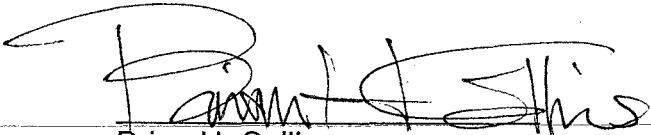
T.J. Martin
Deputy Prosecuting Attorney
Attorney on behalf of Mason County

Skokomish Indian Tribe

Dated this 31st day of August, 2006.



Denese LaClair, Chair



Brian H. Collins
Senior Tribal Attorney
Skokomish Indian Tribe

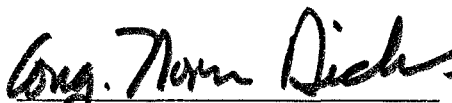
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Public Utility District (PUD) No. 1

Dated this 31st day of August, 2006.


Karl Denison, President

**THIS MEMORANDUM OF UNDERSTANDING IS FURTHER SUPPORTED AND
MADE WITNESS BY:**


Congressman Norm Dicks
Sixth Congressional District Representative
State of Washington