



CAPITOL LAKE — DESCHUTES ESTUARY

Long-Term Management Project Environmental Impact Statement

Meeting Notes Summary

Date: April 19, 2022

Time: 10:00 to 11:45 a.m.

Location: Zoom

Topic: FGWG Meeting

Meeting Participants

Work Group Members

- Jay Burney, City of Olympia
- John Doan, City of Tumwater
- Jeff Gadman, Thurston County
- Sam Gibboney, Port of Olympia
- Rich Hoey, City of Olympia
- Matt Kennelly, LOTT Clean Water Alliance
- Justin Long, LOTT Clean Water Alliance
- Ray Peters, Squaxin Island Tribe
- Alex Smith, Washington Department of Natural Resources (WDNR)

Washington State Senate

- Sen. Mark Schoesler

Washington State House of Representatives

- Rep. Mike Steele
- Rep. Steve Tharinger

Department of Enterprise Services

- Ashley Howard
- Ann Larson
- Carrie Martin

Department of Enterprise Services

- Dave Merchant, Office of the Attorney General

Environmental Impact Statement (EIS) Project Team

- Tessa Gardner-Brown, Floyd|Snider
- Lorelei Juntunen, ECONorthwest
- Ray Outlaw, Floyd|Snider
- Sarah Reich, ECONorthwest

Public

- Wendy Brown
- Doug Levy
- Jack De Meyer
- Richelle Geiger



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Welcome and Introductions

Ann Larson welcomed the group and led a round of introductions, including state legislators invited by the Department of Enterprise Services (Enterprise Services) who were in attendance. Ann noted the Funding and Governance Work Group (FGWG) recently reconvened for the purpose of confirming and memorializing the approach to shared long-term funding and governance for the project.

Tessa Gardner-Brown explained that since this process began in 2018, there has been broad agreement that action must be taken now. Taking no action for the waterbody is unacceptable. The Final EIS is moving forward and expected to be released in October 2022 and an agreement on shared funding and governance is a critical component to deliver with the Final EIS. Doing so allows the project to move forward with more certainty.

FGWG Existing Recommendations

Ann described the cost estimates and related funding assumptions as described in the Draft EIS ([see presentation slide 4](#)).

The FGWG has recommended that construction costs be the state's responsibility because the state built the dam and has had responsibility for maintenance since that time. She noted that the last significant sediment management effort occurred in 1986, led by the Department of General Administration (now Enterprise Services).

Ann explained there is high potential for diversified funding (funds from non-state sources) to reduce the construction costs borne by the state. Enterprise Services will soon begin funding strategy work with a specialized consultant to identify available funding and grant opportunities. She thanked the legislature for providing additional budget during the 2022 legislative session for this critical work. Enterprise Services believes there is good potential that a real portion of the construction costs could be covered with other funds (e.g., federal). She added that design, permitting, and construction costs would be spent over a period of approximately 10 years. Enterprise Services expects to come forward with a capital budget request for design and permitting for the 2023 legislative session; that request would be 10% or less of the estimated construction costs. The capital budget request for construction would come 3-5 years later, hopefully with other federal, tribal, and/or philanthropic dollars secured.



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Ann explained that the FGWG recommended shared responsibility of long-term funding and governance for the Estuary Alternative, which primarily includes sediment management. More certainty around sediment management is key to moving this project forward and this is the focus of the FGWG moving forward. She added that shared funding and governance would begin after construction (approximately 2033).

Focus on Early Legislative Engagement

Ann then discussed the value of legislative participation during this critical work.

She explained the goal is to keep legislators apprised of progress towards long-term sediment management, which is critical to project success and an area of key focus for stakeholders. Sediment management is fundamental to maintaining commercial and recreational navigation in West Bay and avoiding impacts. Continued legislative involvement will help in the event future legislative action be required (e.g., code amendments to accommodate shared governance). The intent is to build awareness around the timing and approach to overall funding and governance and avoid surprises in future capital asks for design, permitting, and then construction.

Ann closed with a reminder that stakeholders at all levels agree that not taking action is an unacceptable outcome. Estuary restoration best supports a range of tribal, federal, state, and local goals.

Question: How is no action legally unacceptable? From the stakeholder perspective it is unacceptable? Are we legally bound to the stakeholders?

Response: We look at no action in a couple of different ways relative to legal standards. First, the existing system does not meet state or federal water quality standards, meaning the state would continue to be in violation of those. The second is about the legal rights of tribes: the basin is within Usual and Accustomed Fishing Areas. Physical access is precluded because of the presence of New Zealand mud snail. Tribes could elect to pursue a legal remedy to regain access in the future.

FGWG Roles, Responsibilities, Decision Framework

Sarah Reich reflected on the previous meeting during which questions came up regarding the FGWG charter and decision-making. Sarah explained the FGWG does not have a charter and one is not anticipated. The FGWG is engaged in a collaborative decision-making process. Ultimately each entity will need to make a decision to sign the agreement. The goal, and hope, is that each



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entity will end up at the same place at the same time. Sarah then described the various roles and responsibilities of individual representatives and member entities.

FGWG representatives:

- Represent the interest of their organization, acting as a conduit of information with organizational leadership
- Provide technical advice on FGWG strategy development to support identifying and defining funding and governance options
- Facilitate progress towards a negotiated funding and governance outcome, identifying support needed for organizational leadership and facilitating internal conversations

Organizational leadership:

- Includes Executive Work Group members and others as specific to each entity
- Have decisional authority to adopt the funding and governance strategy

Sarah explained that through this collaborative decision-making process, FGWG members will develop and recommend a governance structure and funding strategy to their organizational leadership to formally sign. Success is obtaining sufficient support for a legal agreement and funding strategy to ensure long-term management.

Lorelei Juntunen added it is the responsibility of consultant team to ensure we are providing a transparent process with clear milestones and the information needed to achieve these goals.

Recap: Governance Models

Sarah revisited the previous FGWG discussion regarding potential governance models ([see presentation from November 2019 meeting](#)). She explained that the range of possible models started from identifying the universe of potential options and then identifying key information that the FGWG needed for each one. It was then expanded to better understand legal complexities and identify “must haves” for a governance model to work for this process. That information was compared to the available models, resulting in a proposal to move forward with an interlocal agreement (ILA) with the potential for a non-profit.

The stated “must haves” include:



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- Power to create/enact
- State/local participation
- Ability to set/carry out goals
- Funding entities have control over decisions
- Basin-wide actions
- Employ staff, enter contracts, own real estate
- Stable, predictable, sufficient revenues
- Ability to issue debt
- Control over finances

Governance Decisions and Timing

Sarah explained that the governance model discussions resulted in a list of key decisions that need to be addressed to move forward with a legal agreement. She noted the purpose of the discussion today is to identify topics, from that list, that are important for ongoing discussions both individually and collectively.

Dave Merchant explained the project and FGWG are at a new place. Where the previous efforts were focused on preparing a Draft EIS and getting everyone to a place where we could facilitate funding and governance discussions, we now understand the likely preferred alternative and recommended funding and governance approach (ILA).

Dave reviewed a list of substantive decisions and invited discussion towards building an understanding of collective and individual needs which will be further discussed during the upcoming individual meetings.

Membership

Dave noted that the list of potential members includes the FGWG entities. He invited discussion regarding other potential members or important topics related to membership.

Comment: If we are talking about membership, defining the scope is more of a threshold issue.

Comment: Regarding representation from jurisdictions, we should consider if we want electeds appointing other electeds or non-elected appointed members.



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Ann added that when considering elected membership it is important to think about terms in the context of the longevity of this project (potentially over 30 years).

Comment: There would be some benefit to having a membership connection to the legislature. That relationship and reasoning needs to be solid, especially if the legislature is contributing funding.

Comment: The Port of Olympia (Port) is grateful that Enterprise Services is coordinating meetings with the Port and US Army Corps of Engineers (USACE). We should also consider the downstream affected parties such as marinas or anyone that uses the waterways. They may not need full membership, but their interests should be represented.

Comment: When it comes to membership, we do have to think about long-term. We are making a decision that is potentially going to go on into perpetuity. We do have some local examples of organizations that are regional in scope where local electeds have been appointed to a board of directors who then hire a director to lead the work. LOTT Clean Water Alliance and Intercity Transit are good, local examples. Elected representation on the board of directors creates a direct link back to the public they represent.

Comment: One idea in terms of membership is to think about an advisory committee that supports the governing body. The advisory committee would represent other voices in the community. In Thurston County there are not a lot of elected officials so they can be really taxed in terms of governing other groups. We should consider if this is something that requires policy decisions via electeds or is really focused on management.

Scope

Dave asked the group to consider what the scope for this governing body would encompass. Is it just the water body or does it include the surrounding land? Will this entity have control over scope? What role will jurisdictions play?

Tessa described the key components of Estuary governance that need to be considered, which are primarily waterward of land. She said the project would not make meaningful changes to surrounding parks or otherwise. She reviewed the key components in the context of the four project goals.



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- **Sediment management** would require annual bathymetric surveys and recurring maintenance dredging in West Bay
- **Water quality** would primarily be addressed by removing the dam to restore tidal flow and replacing it with a new 5th Avenue Bridge. The new bridge would require future maintenance.
- **Ecological functions** will include implementation of a Habitat Enhancement Plan and staffing of decontamination stations (invasive species)
- **Enhancing community use** would require security and oversight for restoring boating, fishing, and recreation as well as maintenance of boardwalks

She added that while this list is inclusive of everything identified today, the FGWG focus has been sediment management.

Question: Would there be baseline costs with a spike every 6 years? What kind of costs are we looking at every 6 years? What is the scale?

Response: There would be a baseline for annual bathymetric surveys. Costs increases occur on a 6-year cycle, as discussed during the last meeting, and not all areas would be dredged every 6 years. Assuming in-water disposal, the dredging frequency and costs every 6 years are estimated to be approximately \$1.5 million for years 6, 18, and 30 and \$20-25 million for years 12 and 24.

Note: Estimates are for discussion purposes only; estimates only include sediment management activities and are based on preliminary design and related assumptions, including in-water disposal of dredge material.

Comment: We would need an adaptive planning approach to evaluate and evolve. This new entity needs the ability to adapt when necessary.

Question: Regarding the 6-year frequency, are we starting at zero now and counting 6 years?

Response: The last dredge event was completed by Enterprise Services in the lake basin. As part of construction, the basin would be dredged. The first project-related dredge event in West Bay would occur in approximately 2040 based on preliminary construction timing. The driver is dam removal, which is when the clock would start. The assumption is that lake dredging would occur before removal of the dam and that downstream dredging would occur before construction is complete. Note, downstream dredging prior to construction is not a project action.



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Comment: The assumption is the navigation channel and turning basin will be dredged to their authorized depth. USACE cannot dredge sediment that is under a Model Toxics Control Act (MTCA) cleanup action. The assumption that this dredging will occur prior to construction is not something we can rely upon, but it is something that we can address. We are working to see if we can find a path forward, but it is not currently possible for USACE to use dredge funding if the site is listed under MTCA.

Duration

Dave explained a 30-year agreement is assumed but leases could have different constraints.

Comment: Currently the state owns the waterbody and Washington Department of Natural Resources (DNR) manages the majority of lands that would be returned to an estuary. The state historically is hesitant to divest itself of ownership. DNR's preference is to retain ownership and continue to manage the area but is open to other ideas.

Question: When you lay out these different substantive decisions, a big element is going to be allocation of costs. Where does that fit?

Response: The two biggest parts of that are budget and long-term funding, but scope is a key issue.

Budget

Comment: Bond counsel should be engaged to ensure the entity is structured in such a way to issue tax-exempt bonds. If the entity can issue debt, that starts to answer some questions about long-term funding and withdrawal. There must be stable funding for bond to be viable.

Comment: It seems challenging to create a new entity. You have existing jurisdictions with bonding authority. If you then form an independent entity, their bonding authority is based upon the authority of those jurisdictions. Another approach is to have each jurisdiction look at their responsibilities and obligations, then define the obligation accordingly. There could be an agreement that says "we'll help out" on other items but geographically there seem to be defined obligations that would work better than creating a new government entity.

Dave explained the intent was to be able to use one entity's bonding authority for the new entity.



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Comment: If you combine the entities, it may complicate execution. For example, does Tumwater have responsibility for the marinas and yacht club?

Dave noted that under this scenario you end up with two categories of obligations: individual and shared.

Tessa added that the contaminated sediment in Budd Inlet that needs to be dredged now is not a project action. She explained there are some areas where jurisdictional responsibilities could be clear. That is not true for sediment management since all sediment ends up downstream but comes from multiple sources and is also the largest financial burden.

Comment: We are at this crux issue of what is the scope of this project. I agree the scope of remediation of Budd Inlet is not in the scope of this project, but they are inextricably intertwined. Barring some type of ability to complete remediation and have the area removed from MTCA, USACE will not be able to expend federal dredge funding. There are potential solutions for that which are aided by the collective will of the project proponents to help remediation occur.

Question: Do we have enough information to put together very general financial scenarios?

Response: Our intention is to build toward that with the 1:1 meeting but we will discuss this further.

Comment: The adaptive management nature of this is critical, this is going to change and become a more dynamic system. Having some sense of clear obligations of different entities is key so that everyone comes to the table in good faith.

Comment: The scope itself is important. If we had full understanding of what it would take to execute, then the entity could be created to execute the plan, with an executive director. Is there some type of memorandum of understanding (MOU) that we can use to agree to as much of this list as possible? With the next step being better understanding the conditions and refining the approach.

Withdrawal

It is important to understand if and how an individual entity could withdraw from the agreement.



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Comment: This is where the work over the next few months becomes critically important. If we are going to fund it such that each entity has to dedicate funding annually, that can be fragile and volatile. For example, if Thurston County is short on funding, we can choose not to do a chip seal. It should not be an option to leave, membership needs to be permanent. The funding mechanism needs to be independent of government entity budgeting processes.

Comment: A slight alternative would be to allow withdrawal, but obligations remain.

Comment: It should be structured to disincentivize withdrawal.

Comment: It's going to come down to do we want to be able to issue debt. If so, it cannot be optional for an entity to not pay their agreed share.

Comment: In LOTT's agreement entities can withdraw but must still make current bond debt payments.

Comment: This is where discussion with bond counsel becomes so important to happen sooner rather than later.

Comment: LOTT can provide recommendations for who we work with if that is helpful.

Ownership

Comment: To reiterate, the state owns most submersed lands in the area and leases them at no cost to Enterprise Services. There are some tidelands near the 5th Avenue bridge and dam that are owned by Enterprise Services. DNR owning and managing lands long-term makes a lot of sense. Any kind of lease or management agreement would likely be a similar no fee agreement.

Question: Would that include submerged lands or filled tidelands?

Response: It would depend on the situation and what is in the best interest of the project. Depending on nature of the decision, ownership changes may need to go to the Board of Natural Resources.

Decision Timing

Dave noted this is a key topic for the individual meetings but offered opportunity for discussion. We need to understand organizational timelines and decision processes to build a timeline.



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Comment: County commissioners will have to meet for at least one work session and probably more to move this forward. Once they decide it would require a minimum of two weeks beyond that. Work sessions occur every week and we can usually find space for discussion.

Comment: This has real complexity to it, and we probably haven't gotten into the hard part of this yet. Olympia will need a few briefings with council and to plan for that. It would be helpful to put together some models for options to look at. We need to look at contributors and benefits.

Question: When do you plan on having the individual meetings wrapped up?

Response: Early May.

Deschutes Watershed Council

Tessa briefly discussed a request from the City of Olympia and other stakeholders to consider a Deschutes Watershed Council in the governance conversation. She explained that the Water Resource Inventory Area (WRIA) 13 Committee recommended creating a Council to:

- Implement the plan (Watershed Restoration and Enhancement Plan)
- Provide a structure for collaboration on projects
- Identify, recommend, and implement actions to offset impacts from new water right applications, transfers, and changes, and other water use that impact streamflows
- Address water quality issues

Proposed implementing entities include Tribes, the Deschutes Estuary Restoration Team (DERT), local governments, and other stakeholders

Recap Guiding Principles

Sarah revisited the guiding principles that were previously discussed and are still guiding this work ([see presentation slide 14](#)).

Individual Meetings and Homework

Sarah asked members to revisit their individual meeting participants to ensure the right people participate to make meetings as efficient and productive and possible. She asked each entity to articulate the steps and timeline for internal decision making, graphically or in bullets. That



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information will form the foundation of a schedule designed to deliver the funding and governance agreement.

She also asked entities to [revisit today's presentation](#) and prepare thoughts on a list of key questions shared via email following the meeting.

Question: Are you considering any in-person meetings in the future? Particularly given the nature of this work, sometimes this format does not lend itself well to working through challenging discussions.

Response: Carrie committed to considering this option. Ann noted the summer 2021 in-person meeting with Olympia's council was particularly productive.

Next FGWG Meetings

Ray Outlaw reviewed progress on scheduling future FGWG meetings and said the next meeting would likely be on May 23, 2022. After reviewing the responses thus far it has become clear that additional redundancy will be needed to ensure this critical work can stay on schedule. FGWG entities were asked to consider redundancy by identifying additional staff to participate in future meetings and help with coordination efforts.

Public Comment

No members of the public requested to provide comments.

Adjourn

Ann thanked all participants and recognized the value of legislative participation. Carrie thanked the group for participating and adjourned the meeting at 11:45 a.m.