



CAPITOL LAKE — DESCHUTES ESTUARY

Long-Term Management Project Environmental Impact Statement

Meeting Notes Summary

Date: September 22, 2022

Time: 2:36 to 4:21 p.m.

Location: Zoom

Topic: FGWG Meeting

Meeting Participants

Work Group Members

- John Doan, City of Tumwater
- Debbie Sullivan, City of Tumwater
- Jeff Gadman, Thurston County
- Matt Kennelly, LOTT Clean Water Alliance
- Justin Long, LOTT Clean Water Alliance
- Rich Hoey, City of Olympia
- Cheryl Selby, City of Olympia
- Jay Burney, City of Olympia
- Lisa Parshley, LOTT
- Sam Gibboney, Port of Olympia
- Joe Downing, Port of Olympia
- Ray Peters, Squaxin Island Tribe
- Michael Althaus, City of Tumwater
- Alex Smith, Washington Department of Natural Resources (DNR)

Washington State Senate

- Senator Jim Honeyford

Department of Enterprise Services

- Ann Larson
- Ashley Howard
- Christopher Ferguson
- Dave Merchant (Office of the Attorney General)

Environmental Impact Statement (EIS) Project Team

- Tessa Gardner-Brown, Floyd|Snider
- Lorelei Juntunen, ECONorthwest
- Kim Mahoney, Floyd|Snider
- Sarah Reich, ECONorthwest

Public

- Wendy Brown
- Jack DeMeyer
- Kelci Karl-Robinson
- James Crandall



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Welcome, Introductions, and Meeting Objectives

Ann Larson welcomed the group and began the meeting. Tessa Gardner-Brown explained the objectives of the meeting, which include:

- Discuss last outstanding items in the Memorandum of Understanding (MOU) in order to generate a final signature version
- Confirm use of “Table 2” for cost allocations
- Confirm entity-specific process and forecast for MOU signatures

Comment: There is a reference in Section 5 of the current draft MOU that identifies Thurston County as managing funds collected from the Funding and Governance Work Group (FGWG) members. This reference is in error and should be corrected.

Goal and Purpose of MOU

Sarah Reich thanked the FGWG for their participation in reviewing the MOU and reminded the group of the schedule target for the MOU, which is to execute the MOU this fall and attach to the final Environmental Impact Statement (EIS) that will be issued at the end of October. Sarah explained that the MOU serves a variety of purposes and moves the project forward in the following key ways, even if it is non-binding:

- The MOU communicates to the legislature that the project has local commitment from the FGWG. The MOU is a good step in this direction because it shows local support, describes areas of agreement, and shows the intent to commit funds to long-term sediment management.
- The MOU will help us move toward an estuary restoration for shared benefit.
- The MOU builds momentum toward an Interlocal Agreement (ILA), which would support a working waterfront and recreational boating in the Deschutes Estuary.

MOU Open Items for Discussion

Dave Merchant explained that the MOU distributed to the FGWG prior to the meeting aimed to address all comments made by the FGWG in their review of the previous MOU draft, though not all suggested wording was incorporated exactly as suggested.

- Dave described final MOU items that need to be confirmed with the FGWG. New content to further increase certainty of funding through 2050.



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- Status of financial management roles, to include removing Thurston County as the FGWG member assumed to carry out this responsibility and move the State into this role.
- Modified trigger to start of annual payments made by FGWG members. Previously, the trigger had been “full” construction funding; the proposed revision is to remove “full” so that payment can begin when construction funding is allocated. This would allow the state to pursue a phased funding approach, which would not be unreasonable or uncommon.
- Increased specificity around the use of planning-level costs in the MOU and the ability to update these cost estimates if/as they become refined prior to FGWG members beginning their annual sediment management payments.

Tessa described the section of the MOU discussing potential renegotiation of the ILA, explaining that one goal in writing this section was to include a renegotiation clause for a situation where sediment management costs exceed the available funds that have been collected from the FGWG through annual payments. Tessa reminded the group that the planning-level costs in the MOU represent the high-end of the planning level cost range (+35%), and include a 15% contingency. Tessa asked the FGWG whether the MOU should define an additional maximum allowable exceedance beyond this without requiring a renegotiation of the terms of the ILA.

Comment: If a maximum allowable exceedance of costs is agreed to, it should be represented as a hard number rather than as a percentage. Then, if costs exceed that number, a renegotiation of the ILA would be triggered.

Comment: A hard cost is preferred to prevent the maximum allowable exceedance of costs from being nebulous.

Tessa asked whether the maximum allowable exceedance of costs should be included in values provided in the MOU.

Comment: A cost should be included in the table and should consider last year’s high inflation rates.

Comment: A hard cap needs to be included, and it could be revisited every year.

Sarah encouraged the group to consider whether they want the maximum allowed cap to account for the uncertainty in inflation or whether it should account for uncertainty in project costs. If the latter, then the planning-level cost estimates communicated in the MOU already incorporate that uncertainty.



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Question: The Turning Basin is a federal asset that the U.S. Army Corps of Engineers (Corps) is responsible for dredging. How do the cost allocations change if the Corps is removed from Table 2?

Response: Tessa explained that the cost allocated to each entity would not change, but represented percentages allocated to each FGWG entity change when the Corps is removed because you need to re-total to 100%.

Comment: The represented 2022 dollars are fairly conservative, so if we add more contingency, it's still a lot of money. Instead, we could say that there's a cap based on a percentage of today's estimate and if the project costs exceed that cap, then a renegotiation of the ILA is triggered. If each entity wants to set aside more money annually to account for that cap, they could do so.

Dave asked the group to consider whether we are assuming that a renegotiation of the ILA should be required in this scenario.

Comment: If sediment management costs are significantly higher than they are estimated to be, coming back together to renegotiate is a good thing.

Comment: The group could look at this as an "inflation agreement," recognizing that we are planning around 2022 dollars and are attempting to account for inflation in the maximum cap amount.

Tessa asked whether we should represent an inflation rate in the MOU before it is signed or leave this to be negotiated during preparation of the ILA?

Comment: The earlier that the FGWG agrees to what an assumed maximum allowed cost exceedance is, the better. The members could assume that interest is earned in the money collected from our annual payment and could assume a 3% inflation, and plan their budgets around those assumptions; if maintenance dredging costs exceed these assumptions, then there should be a renegotiation trigger.

Comment: If inflation into the future is similar to last year's high inflation rates, the FGWG should meet to renegotiate the ILA.

Tessa clarified how best to communicate the group's discussion of maximum allowed cost exceedance, confirming that the planning-level costs should remain as is shown in the most current MOU, and then continue with renegotiation of the ILA if sediment management costs are exhausted/exceeded. No opposition was communicated by the group.



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Dave outlined additional changes that have been made to the MOU in the last round of edits, which include:

- Additional acknowledgement that the MOU is non-binding
- Acknowledging the recreational boating community in addition to the working waterfront as being supported by the ILA
- Proposed governance responsibilities among the FGWG members
- Recognition that the ILA is yet to come
- Language detailing that the ILA may be renegotiated if sediment management funds are exhausted
- Language detailing that if sediment management cost estimates were high, and collected funds remain after the term of the ILA, then any remaining funds after 2050 will be refunded appropriately to each entity

Question: If the marinas aren't signatories to the MOU or ILA, why can the ILA be renegotiated if the marinas fail to provide funding for their obligated portion of sediment management?

Response: Dave explained that many of the ILA's benefits apply to both the FGWG and to the private marinas. It seemed important when drafting the MOU that a pre-condition of FGWG members' payments is that private marinas are making their payments too, since each benefits from the ILA. This pre-condition also strengthens an argument that the ILA does not constitute a gift of public funds.

Question: Then, what agreement do the private marinas sign?

Response: Dave said that the private marinas would be signing an agreement with one of the state entities, most likely the Department of Natural Resources, and that the agreement would require the private marinas to pay for their appropriated costs associated with dredging equivalent to the No Action Alternative. Sarah added that we are still working through these details.

Question: If the majority of the FGWG members request a renegotiation, should that be allowed and specified in Section 4 of the MOU?

Question: If the group agreed to this renegotiation trigger, what would be the process of identifying a majority?

Comment: A majority could be identified through a petition. Should the renegotiation trigger actually require three-fourths majority, though?



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Comment: A renegotiation trigger should not result in members separating from the agreement, thereby creating a potential scenario where West Bay sees increased sediment accumulation without sufficient funding to manage the sediment.

Response: Dave specified that there is language in the MOU obligating members to pay their appropriated share if they want to leave the agreement.

Comment: The legislature should understand that these entities are making a long-term commitment so the ability to leave or renegotiate should not be encouraged or necessarily easy.

Comment: Future councils and staff members will have to carry out commitments made today, just as they do now for any other public infrastructure project.

Comment: A renegotiation trigger based on a majority of the members' desire to renegotiate the ILA should not be written into the ILA if it could potentially lead to a method for members to easily exit the agreement.

Comment: It is hard to know what the future holds, so there is substance to the idea that an ILA renegotiation trigger could be added, allowing the majority of FGWG members to decide to renegotiate the ILA. However, such a clause should require all FGWG members to agree to renegotiation.

Comment: Full group agreement to renegotiate is a good idea so the group can adjust to unpredictable future circumstances that may justify new terms of the agreement.

Dave said he will add a clause in the MOU that the ILA shall only be amended or modified by written agreement of all FGWG members.

Comment: The MOU could include a clause requiring an adaptive management meeting after every dredge event to discuss relevant findings, such as pros and cons of the work completed and how the work was managed.

Sarah said that we have similar language in the MOU now which we can slightly edit to reflect that after every maintenance dredge event, relevant dredge information will be provided to all FGWG members in a dredge summary report.

Comment: The MOU should identify who is responsible for providing notifications to the FGWG and who the Contract Manager is.

Dave confirmed that we would make revisions to be clear who is in a convening role in this agreement.

Tessa said that we should clarify assumptions regarding the Port Plaza and Percival Landing areas. The maintenance dredging areas identified in the MOU do not include Percival Landing and the



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Port Plaza because they do not support long-term leased moorage and because there is no defined trigger for when maintenance dredging would occur. If dredging is needed, it could be done at the same time as other dredge events in West Bay.

Comment: Percival Landing and the Port Plaza are of equal importance to other areas whose dredging is covered by the ILA; the dredging needs of these areas should be factored into the ILA.

Comment: Some access to the Olympia Yacht Club is provided by the Percival Landing area, so that area should be dredged to support access.

Tessa asked whether all FGWG members should pay their entities' allocated portion of maintenance dredging for Percival Landing and the Port Plaza.

Comment: Yes; West Bay should be managed holistically.

Sarah noted the value of consistency throughout our work and that we have no identified triggers for dredging events in Percival Landing or the Port Plaza. Tessa described that, based on modeling conducted for the project, each of these areas may be dredged once within the term of the ILA. Costs allocated to each FGWG member can be recalculated to distribute the estimated cost of maintenance dredging at Percival Landing and the Port Plaza.

Comment: The map image in the MOU should be edited to remove the Corps' Turning Basin from the same area as the Port of Olympia.

Comment: If the funds are invested, they should be safely invested even if they are not earning a high interest rate.

Dave said that he and Ashley Howard are meeting with the Office of Financial Management (OFM), and that OFM has provided assurance that their office can manage the funds collected from the FGWG for West Bay's sediment management. Ashley said that she is attempting to learn how the collected funds could be invested in an account earning interest. Ashley also said that another option for the funds' management with OFM is to hold the money in an escrow account.

Tessa asked if we should wait until preparing the ILA to identify how the funds are being managed, and if we can note this topic in the MOU as an item for further discussion? No opposition was spoken by the FGWG.

Comment: If the State legislature does not provide full construction funding, project construction would not be complete and long-term dredging would not be needed. So, if only partial construction funding is secured by the state, the FGWG members should start paying their respective annual sediment management dues. Then, if full construction funding is not secured by the State, the FGWG could have their payments refunded to them, as is identified in the MOU.



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Question: Do all FGWG members agree to the allocation approach of Table 2?

Response: Tessa said that our understanding is that we have consensus on Table 2. No opposition was spoken by the FGWG.

Remaining MOU Steps

Tessa described the remaining steps for finalization of the MOU, saying that we intend to send the final MOU to the FGWG on September 27, 2022. Then, in early October, each FGWG member would sign the final MOU; the deadline for MOU signature is October 18. Finally, the executed MOU would be attached to the Final EIS, which will be issued on October 31, 2022. Tessa asked the group when they expect to have the MOU signed by their respective entity's signatory; each entity's response is included below:

- City of Olympia
 - MOU will be signed after approval at the October 18, 2022 City Council meeting
- City of Tumwater
 - MOU will be reviewed at the October 11 City Council work session and then will come to the Council for approval and signature on October 18, 2022.
 - Tessa communicated the team's availability to attend the October 11 City Council work session, if it would be helpful.
- LOTT
 - The MOU will go before their Board of Directors on October 12, and then could be approved and signed on October 13, 2022.
- Port of Olympia
 - The MOU is scheduled to be presented before the Port's Commission at their September 26 Commission meeting. The MOU approval is scheduled to occur at the October 10 Port Commission meeting, and the MOU could be signed by October 11, 2022.
- Squaxin Island Tribe
 - The MOU could be approved at the October 13 Tribal Council meeting and could be signed on October 14, 2022.
- State of Washington
 - The MOU will be approved and signed in early October 2022.
- Thurston County
 - The MOU will be presented at the County Commissioners work session before approval and signature, and will be signed by October 18, 2022.
 - Tessa communicated the team's availability to attend potential work sessions or evening meetings, if it would be helpful.



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Dave said that he will add a clause in the MOU allowing a counterpart or electronic signature to satisfy representing the entities' signatory.

Public Comment

No members of the public requested to provide comments.

Adjourn

Ann thanked the attendees and verbalized her appreciation for the hard work of the FGWG. Ann adjourned the meeting at 4:21 p.m.