



CAPITOL LAKE — DESCHUTES ESTUARY

Long-Term Management Project Environmental Impact Statement

Meeting Notes Summary

Date: July 26, 2022

Time: 8 to 9:11 a.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
- Tye Menser, 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
- Sam Gibboney, Port of Olympia
- Lisa Parks, Port of Olympia
- Joe Downing, Port of Olympia
- Ray Peters, Squaxin Island Tribe
- Jeff Dickison, Squaxin Island Tribe
- Alex Smith, Washington Department of Natural Resources (DNR)

Washington State Senate

- Senator Mark Mullett

Department of Enterprise Services

- Carrie Martin
- Ann Larson
- Ashley Howard
- Tara Smith
- 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
- Bill McGregor



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Welcome, Introductions, and Meeting Objectives

Carrie Martin welcomed the group and began the meeting. Carrie introduced the project team and thanked the Funding and Governance Work Group (FGWG) members for providing an initial review and feedback of a draft version of the Memorandum of Understanding (MOU). Carrie then explained the objectives of the meeting, which include:

- Reviewing the purpose of the MOU and its key content
- Discussing key comment themes from the initial review of the MOU draft, and identifying primary areas of revision for a second draft MOU
- Revisiting the process for MOU review, revisions, and signatures

Carrie completed her introduction by noting that time would be reserved to discuss next steps and for public comment and discussion at the end of the meeting.

Goal and Purpose of MOU

Tessa Gardner-Brown reminded the FGWG 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. Tessa 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 allows us to progress toward an ILA

Primary Content in Draft MOU

Dave Merchant thanked the group for their participation and feedback in the MOU. Dave explained that the MOU will be revised based on the FGWG's feedback and discussion at today's meeting. Dave said that the project team has added a background section to inform the public of the project. Dave described the primary content of the MOU, for those less familiar with the document, including:



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- A discussion of pre-project conditions to frame the projects and processes that need to happen before the future condition that will be governed and funded by this group under terms of the MOU and future ILA.
- The transfer of assets or contract responsibilities. He explained that constructed assets were the primary focus of this discussion in the initial draft of the MOU, and these differ from responsibilities, so language will be added in the next draft MOU to this effect.
- Terms of the agreement, including triggers for renegotiation and duration of the agreement, among other terms of agreement.
- Planning-level cost estimates for funding allocations among the FGWG entities.
- A section for issues that remain under discussion among the FGWG entities.

Key Comment Themes

Dave described the key comment themes received by the participating entities in review of the draft MOU, which are included on [slide 7 of the presentation](#).

Dave first discussed the comment theme of asset transfers and prompted group discussion by asking: if an agency will receive a constructed asset, what role does that agency want to have in the design and ownership of the asset? Dave indicated that we could add language to the next draft of the MOU to this effect and asked the group to speak to whether such added language is favorable.

Comment: The City of Olympia said that those entities receiving constructed assets should have a role in the asset's design to ensure it will fit within the entities' design standards and will achieve a connection with the community.

Question: Tessa asked if a sentence added to the MOU stating that the agency will have a role in the design of their transferred constructed assets is sufficient to satisfy this request?

Response: The City of Olympia said that there needs to be strong language in the MOU devoting agencies to having a role in the asset's design.

Comment: The City of Tumwater concurred with the comments from the City of Olympia.

Comment: The City of Olympia further spoke to the importance of their community being engaged on the design of the transferred constructed assets. The language should state that the entity will



Meeting Notes Summary

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Time: 8 to 9:11 a.m.

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need to accept or approve the asset's design and needs to communicate a role beyond simply coordinating on the design of the asset.

Response: Dave said that he will commit to finding language that appropriately reflects the group's discussion.

Dave noted that the MOU could require separate agreements specific to those entities being transferred constructed assets and the asset transfer.

Comment: Thurston County said that the design of constructed assets could be managed through separate agreements, but that there would need to be language added to the MOU specifying that asset design will be guided by those separate agreements.

Comment: The City of Olympia agreed with Thurston County and said that there needs to be a separate agreement that details an agency's relationship with a construction asset. The project is too complex to limit a discussion of transferred assets to only a few paragraphs in the MOU.

Comment: The City of Tumwater said that separate agreements with each entity sounds easier than a multi-party agreement and contemplated whether they specifically may need to create or manage easements for the boardwalks expected to be transferred to them.

Comment: The Port of Olympia said that a separate, more detailed agreement with individual entities was preferred and should include an encompassing discussion, from access of the asset to entity responsibility as it could relate to private property that is not owned by the Port, if the Port were to oversee bathymetric surveys or dredging at the marinas.

Response: Tessa clarified that there is a key difference between a construction asset transferred to a receiving party and a transferred responsibility, and that this key difference will be described in the MOU.

Dave continued discussion of key comment themes and addressed cost allocation. Dave noted that a fundamental question for the group's discussion is: should cost allocation percentages be included in the MOU?

Comment: It would be helpful to include the cost allocation percentages in the MOU, even if they are not final, so that entities can share what the allocations are now and have meaningful data to share with their governing bodies.



Meeting Notes Summary

Date: July 26, 2022

Time: 8 to 9:11 a.m.

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Comment: Thurston County said that the cost allocation percentages should be included in the MOU. This group of entities being at the table shows their commitment to being a part of the project, but if the agreement does not include the cost allocation percentages, the agreement will not communicate commitment from the entities, and it would also make the agreement nebulous and confusing.

Comment: LOTT said that including the cost allocation percentages depends on how much consensus of the allocations there is among the group. If allocation percentages are listed in the MOU, LOTT thinks the annual cost of the allocation should be included, as well. The MOU already discusses the elements that drive the costs, so in the interest of transparency, the costs should be included. If the maximum increase agreed to be applied to current allocated costs without triggering renegotiation is a certain percentage, then the allocations should build in that percentage as a contingency in the costs described in the MOU.

Comment: The Port of Olympia said that this version of the MOU shows that they are potentially responsible for bathymetric surveys and dredge design permitting and contract management, but are unsure what those responsibilities might cost. Those responsibilities' costs need to be identified and the maximum percentage of additional costs should apply to the cost of their responsibilities, as well.

Comment: The City of Olympia said that the MOU needs to disclose more than just the allocation percentages because it is easy to misunderstand what the percentages mean without also knowing what the allocated cost totals are. The project team should show the math that resulted in the allocated costs.

Comment: The City of Tumwater agreed with the City of Olympia's request to show the math behind the allocation costs. They support the project, but need to build budgets around real dollars. They agree with LOTT's idea to build contingency into the costs represented in the MOU.

Tessa said that given this discussion, we have made note of an action item for the FGWG entities to consider a maximum allowable increase to the cost allocations that would be embedded in the projected total cost and would avoid a renegotiation, and asked the FGWG to discuss internally and provide feedback at the next meeting.

Dave then discussed the key comment theme related to finance management. Dave described that these comments generally considered how funds would be managed or returned to entities if the project has been overfunded. Dave noted that we could consider pro rata return, and



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invited the FGWG to share their ideas. Dave also asked the FGWG to discuss whether there is consensus around a payment date that can be named in the MOU.

Comment: LOTT said that December 31 may be the most appropriate date for their organization and noted that entities who receive property tax will also appreciate that timeline.

Dave asked whether December 31 is acceptable to the entire FGWG; no opposition was voiced or written in response to Dave's question. Dave confirmed that, as an example, payment for the year 2025 would be due on December 31, 2025.

Dave discussed the key comment theme of renegotiation and whether upland disposal of dredged material should be a trigger for renegotiation. Dave said that there could be scenarios where a small portion of dredged material needs to be disposed of upland, but that it may not be an appreciable amount, so perhaps the renegotiation trigger should consider the maximum cost of upland disposal instead.

Tessa asked the FGWG to consider a maximum cost increase as the threshold for renegotiation rather than a potential for upland disposal of any dredged material. The FGWG generally agreed, and no opposition was voiced in response to Tessa's question.

Dave asked the group to consider: if an entity does not comply with obligations of the agreement, should that be considered a breach of contract, or require renegotiation of the agreement?

Comment: LOTT said that an entity can be removed from the FGWG at any time but should be responsible for their commitments disclosed in the agreement.

Comment: The City of Olympia said that strong language around entity responsibilities and consequences for not carrying out their responsibilities needs to be included in the agreement, and that these consequences should reflect a breach of contract. The entities should be able to communicate amongst each other, in case an issue arises that can be internally resolved through informal renegotiation.

Comment: Thurston County suggested that the language that created the LOTT organization be considered in the agreement's drafting, particularly its discussion around the concept of debt.

Dave discussed the last key comment theme, which is the agreement terms and signatories. Dave asked the FGWG to consider whether the renewal duration of the agreement needs to be defined and suggested that we could remove a defined number of years from this element of the



Meeting Notes Summary

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agreement. Dave then reminded the FGWG to coordinate internally and determine the respective agency representatives who will sign the MOU.

Comment: LOTT concurred that a defined number of years could be removed from the MOU's discussion of renewal duration.

Tessa said that the comments discussed at this meeting were the key comment themes only and said that other received comments were incorporated into revisions made to the MOU, but did not necessarily require group discussion.

Question: The Port of Olympia asked if the project team could talk about funding sources that are described in page 4 of the draft MOU.

Response: Ann Larson said that Enterprise Services is preparing a capital budget request and is considering a variety of funding opportunities. Ann specified that the upcoming capital budget request would focus on funding for design and permitting, and that construction funding requests would be later. Sarah Reich also explained that sources of construction funding for similar projects are usually diverse and may include nonprofit, philanthropic, and government grant funding.

Tessa asked whether the FGWG had other MOU feedback they wished to discuss, and there were no responses from the FGWG.

Next Steps

Tessa described the MOU's anticipated schedule in the coming months. See [slide 8 of the presentation](#). Tessa asked the group if it was reasonable for each entity to receive feedback from their governing bodies throughout August.

Question: Will the final draft of the MOU have allocations and percentages enclosed, so that they may be discussed with governing bodies?

Response: Tessa answered by saying that a revised MOU will be distributed and include total costs and allocations percentages for each FGWG entity by August 5, and encouraged that the allocation details in the MOU be discussed with governing bodies.

Comment: The response provided by Tessa is agreeable to Thurston County, but the County is concerned by the amount of time it may take for their Council to sign the MOU. The most important piece of information to present to their Council are the cost allocations, and this piece is being compressed into a small frame of time in the middle of August which may prevent the County Commission from agreeing to the MOU by the end of August.



Meeting Notes Summary

Date: July 26, 2022

Time: 8 to 9:11 a.m.

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Response: Tessa offered the support of the project team, saying that we can be available to present to the County Commission. Tessa also said that the schedule still allows two months to find agreement among participating entities and to gather signatures by the beginning of October.

Comment: The Port of Olympia shared concerns similar to the County. The Port will only hold one meeting with their Commission in August, which is scheduled for August 8. The Port will confer with their Commissioners to see if the Commission wants to have a special meeting in the last few weeks of August. The Port said that in order to fully inform the Commission, the Port will need to present cost estimates representing the Port's project responsibilities, to represent a true monetary commitment associated with the Port's signing of the MOU. The Port acknowledged that this element of the MOU schedule would be challenging.

Comment: The City of Olympia said that their Council may not be able to provide feedback on the MOU until mid-September due to existing schedule conflicts, but that once the Council is briefed, a signed MOU should not take long to obtain from their Council.

Question: Does the FGWG want to communicate the funding cost and percentage allocations this year?

Response: Ann answered that the ideal situation is to communicate as much commitment to the project as possible in the legislative funding request, and so it is the goal of the project team to represent these allocations in that funding request.

Comment: The City of Olympia said that a briefing with their Council in a public forum describing why the project will be beneficial for the region is key.

Comment: LOTT suggested that the project team send a revised allocation cost table before sending the next draft MOU since the costs are the most important discussion point with each entities' governing body, as this may allow entities to engage in earlier conversation with their governing bodies.

Response: Tessa committed to discussing LOTT's idea internally.

Tessa emphasized that the ability to move forward toward the estuary restoration will be supported by a signed MOU.

Question: Will the MOU be binding?

Response: Dave answered that the MOU is not binding, and that by signing the MOU, the participating entities are indicating conceptual agreement to terms of the MOU. The MOU will be transitioned into an ILA, which will be a binding signed agreement.



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Public Comment

No members of the public requested to provide comments.

Adjourn

Carrie thanked the attendees and adjourned the meeting at 9:11 a.m.