



Board of County Commissioners  
Agenda Setting  
Regular Meeting  
Tuesday, April 16, 2024  
9:00 AM to 12:00 PM  
3000 Pacific Avenue, Room 110

For public virtual attendance, you may follow along on the [Thurston County YouTube Channel](#).

## AGENDA

- I. **Review of BoCC Draft Agenda** – Meeting of April 16, 2024
- II. **Proclamations and Awards**
- III. **Advisory Boards and Commissions**
- IV. **PIO Check-in**
- V. **Commissioners Items**
  1. **Executive Session** – RCW 42.30.110 (1)(i): To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency. – *Deschutes Estuary Restoration ILA – Approximately 60 minutes – Commissioners' Action may follow.*
  2. **Executive Session** – RCW 42.30.110 (1)(i): To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency. – *Budget – Approximately 30 minutes – Commissioners' Action may follow.*
  3. Other Commissioners Items

Disability Accommodations: Room 110 is equipped with an assistive listening system and is wheelchair accessible. To request disability accommodations, call the Reasonable Accommodation Coordinator at least 3 days prior to the meeting at 360-786-5440. Persons with speech or hearing disabilities may call via Washington Relay at 711 or 800-833-6388.



# Board of County Commissioners

Carolina Mejia, District 1 ♦ Gary Edwards, District 2 ♦ Tye Menser, District 3  
Wayne Fournier, District 4 ♦ Emily Clouse, District 5

Agenda for Meeting Date: **Tuesday, April 16, 2024**

## **Summary of Timed Items**

**2:00 p.m.) Call Meeting to Order**

**2:05 p.m.) Presentations**

**3:30 p.m.) Public Hearing**

## **2:00 p.m.) Call Meeting to Order**

- Pledge of Allegiance to be led by Commissioner Edwards
- Approval of the Tuesday, April 16, 2024 Agenda

## **2:05 p.m.) Presentations**

**Dept:** Commissioners

**Description:** Proclamation for Earth Day

**Contact:** Leonard Hernandez, County Manager

**Action:** The Board of County Commissioners will proclaim April 22, 2024 as Earth Day in Thurston County.



BoCC-AIS-2024-04-16-Commissioners-AmyDavis-5904.pdf  
PDF File  
80.5 KB

## **1) Opportunity for the Public to Address the Board**

## **2) County Manager's Update**

- a) **Item Description:** Follow-up on citizen issues
- b) **Item Description:** Other current issues

## **3) Consent Item(s) "a" through "f"**

a) **Dept:** Auditor

**Description:** Accessible Communities Advisory Committee Grant

**Contact:** Mary Hall, Auditor

**Action:** Move to authorize the County Auditor to enter into an Interlocal Agreement with the Washington State Employment Security Department to accept grant funds of \$25,410 for a walking path to improve accessibility to the Elections Center.



BoCC-AIS-2024-04-16-Auditor-CathleenBright-3848.pdf  
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360 KB

- b) **Dept:** Auditor  
**Description:** Purchase of Ballot Sorting Machine with Runbeck Election Services, Inc.  
**Contact:** Mary Hall, Auditor  
**Action:** Move to authorize the County Auditor to execute the purchase of a second Runbeck Agilis ballot sorting machine with Runbeck Election Services, Inc. for \$355,890, plus tax and shipping, and subsequent annual maintenance for \$13,390 each year.

c) **Dept:** Superior Court  
**Description:** One-time Exception to Personnel Policy  
**Contact:** Kristin Jensen, Superior Court Administrator  
**Action:** Move to approve a one-time exception to the Personnel Policies regarding setting starting salary for an internal promotion.

d) **Dept:** Commissioners  
**Description:** Appointment to the Citizens' Commission on Salaries for Elected Officials  
**Contact:** Amy Davis, Clerk of the Board  
**Action:** Move to appoint Dominic Davis to the Citizens' Commission on Salaries for Elected Officials as a District 3 representative for the remainder of the current term expiring March 31, 2025.

e) **Dept:** Auditor  
**Description:** Voucher list  
**Contact:** Darren Bennett, Financial Services Manager  
**Action:** Move to approve the voucher list for the week of April 1, 2024 for a combined amount of \$3,210,807.55.

f) **Dept:** Auditor  
**Description:** Voucher list  
**Contact:** Darren Bennett, Financial Services Manager  
**Action:** Move to approve the voucher list for the week of April 8, 2024 for a combined amount of \$1,125,495.69.

## **Department Items**

### **4) Commissioners**

- a)     **Description:** Family Support Center - Federal Office on Violence Against Women Grant MOU
- Contact:** Robin Campbell, County Manager, Assistant
- Action:** Move to approve the Memorandum of Understanding between the County and the Family Support Center regarding the Office on Violence Against Women Grant in support of an application for federal funding, and authorize the Chair of the Board of County Commissioners, the County Prosecutor, the County Clerk and the County Sheriff to sign the MOU.



BoCC-AIS-2024-04-30-Commissioners-RobinCampbe5839.pdf  
PDF File  
600 KB

### **5) Community Planning and Economic Development**

- a)     **Description:** Habitat Conservation Plan Land Acquisition
- Contact:** Andrew Deffobis, Senior Planner
- Action:** Move to approve the purchase and sale agreement for 5 acres of Tenino pocket gopher (TPG) habitat in an amount not to exceed the appraised value and associated closing costs, and authorize the County Manager to execute the purchase and sign related closing documents within 90 days of the purchase and sale agreement being finalized, in order to facilitate future development by establishing TPG species credits pursuant to the Thurston County Habitat Conservation Plan.



BoCC-AIS-2024-04-02-CommunityPlanningandEconomicDevelopment-AndrewDeffobis1818.pdf  
PDF File  
536 KB

### **6) Information Technology**

- a)     **Description:** Waive competitive bidding requirement for consulting contract
- Contact:** Sherrie Ilg, IT Director
- Action:** Move to waive competitive bidding requirements in accordance with Thurston County Purchasing Policy 6G, and authorize the Director of Information Technology to execute an agreement with OpenGov in an amount not to exceed \$32,979, for Professional Service Deployment.



BoCC-AIS-2024-04-16-InformationTechnology-SherrieIlg-5014.pdf  
PDF File  
448 KB

## 7) **Public Works**

- a)     **Description:** BNSF Railway Grade Crossing Construction and Maintenance Agreement for Marvin Rd Upgrade Phase 1 (22nd Ave to Union Mills Rd) Project, CP# 61478
- Contact:** Ben Enfield, Senior Civil Engineer
- Action:** Move to approve the Grade Crossing Construction and Maintenance Agreement between Thurston County and BNSF Railway as part of the Marvin Rd Upgrade Phase 1 (22<sup>nd</sup> Ave to Union Mills Rd) project, CP# 61478 and authorize the Public Works Director to execute the Agreement.
- b)     **Description:** Contract Award for Pacific Ave SE Pavement Preservation Project, CP# 98408
- Contact:** Brian Meier, Engineering Project Manager
- Action:** Move to award the contract for the Pacific Ave SE Pavement Preservation project, CP# 98408, to Lakeside Industries, Inc., of Olympia, WA, in the amount of \$1,609,615.50 and to authorize the Director of Public Works to execute the contract and any change orders for this project due to unforeseen conditions only (not for changes in scope) for up to 10% of the contract (\$160,961 or an aggregate of \$1,770,577).
- c)     **Description:** Contract Award for Yelm Highway SE Pavement Preservation Project, CP# 98409
- Contact:** Brian Meier, Engineering Project Manager
- Action:** Move to award the contract for the Yelm Hwy SE Pavement Preservation project, CP# 98409, to Granite Construction Company, of Olympia, WA, in the amount of \$2,653,441.50 and to authorize the Director of Public Works to execute the contract and any change orders for this project due to unforeseen conditions only (not for changes in scope) for up to 10% of the contract (\$265,344 or an aggregate of \$2,918,786).
- d)     **Description:** Interlocal Agreement with the City of Rainier for Sport-Courts Amenities
- Contact:** Mike Lowman, Road Operations Manager
- Action:** Move to execute an Interlocal Agreement between Thurston County and the City of Rainier for improvements within the County's Yelm-Rainier-Tenino trail corridor right of way to include sport-courts amenities.



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PublicWorks-AngelaCelestine-  
0325.pdf  
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BoCC-AIS-2024-04-16-  
PublicWorks-AngelaCelestine-  
0617.pdf  
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BoCC-AIS-2024-04-16-  
PublicWorks-AngelaCelestine-  
0803.pdf  
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BoCC-AIS-2024-04-16-  
PublicWorks-AngelaCelestine-  
0403.pdf  
PDF File  
512 KB

- e) **Description:** Project Prospectus and Local Programs Funding Agreement for SR 507 and Vail Rd SE Roundabout Project, CP# 61566
- Contact:** Marcus Storvick, Senior Civil Engineer
- Action:** Move to approve the Project Prospectus and Local Programs Funding Agreement with the Washington State Department of Transportation and authorize the Director of Public Works to execute the prospectus and agreement and all subsequent amendments and supplements for the SR 507 and Vail Rd SE Roundabout project, CP# 61566.



BoCC-AIS-2024-04-16-  
PublicWorks-AngelaCelestine-  
0200.pdf  
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2.25 MB

- f) **Description:** Project Prospectus and Local Programs Funding Agreement for Green Cove Creek Fish Barrier Removal – Phase 1 Project, CP# 63023
- Contact:** Marcus Storvick, Senior Civil Engineer
- Action:** Move to approve the Project Prospectus and Local Programs Funding Agreement with the Washington State Department of Transportation and authorize the Director of Public Works to execute the prospectus and agreement and all subsequent amendments and supplements for the Green Cove Creek Fish Barrier Removal – Phase 1 project, CP# 63023.



BoCC-AIS-2024-04-16-  
PublicWorks-AngelaCelestine-  
5949.pdf  
PDF File  
2.73 MB

- g) **Description:** Project Prospectus and Local Programs Funding Agreement for Green Cove Creek Fish Barrier Removal – Phase 2 Project, CP# 63026
- Contact:** Marcus Storvick, Senior Civil Engineer
- Action:** Move to approve the Project Prospectus and Local Programs Funding Agreement with the Washington State Department of Transportation and authorize the Director of Public Works to execute the prospectus and agreement and all subsequent amendments and supplements for the Green Cove Creek Fish Barrier Removal – Phase 2 project, CP# 63026.



BoCC-AIS-2024-04-16-  
PublicWorks-AngelaCelestine-  
0053.pdf  
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3.24 MB

- h) **Description:** Resolution and Call for Sealed Bids for Green Cove Creek Fish Barrier Removal – Phase 1 Project, CP# 63023
- Contact:** Marcus Storvick, Senior Civil Engineer
- Action:** Move to approve the resolution calling for sealed bids and authorize the County Engineer to set the bid date and time for receipt and opening of said bids for the Green Cove Creek Fish Barrier Removal – Phase 1 project, CP# 63023.



BoCC-AIS-2024-04-16-  
PublicWorks-AngelaCelestine-  
5827.pdf  
PDF File  
2.21 MB

- i) **Description:** Resolution and Call for Sealed Bids for Thompson Creek Rd SE at Thompson Creek Fish Passage Project, CP# 63025

**Contact:** Marcus Storvick, Senior Civil Engineer

**Action:** Move to approve the resolution calling for sealed bids and authorize the County Engineer to set the bid date and time for receipt and opening of said bids for the Thompson Creek Rd SE at Thompson Creek Fish Passage Project, CP# 63025.



BoCC-AIS-2024-04-16-PublicWorks-AngelaCelestine-2422.pdf  
PDF File  
2.31 MB

- j) **Description:** Resolution for Temporary Closure of Country Club Rd NW from Country Club Loop NW to 40th Ln NW

**Contact:** Marcus Storvick, Senior Civil Engineer

**Action:** Move to approve the resolution authorizing the County Engineer to temporarily close Country Club Rd NW from Country Club Loop NW to 40th Ln NW for up to a 15 month time period between June 1, 2024 and October 31, 2025.



BoCC-AIS-2024-04-16-PublicWorks-AngelaCelestine-1639.pdf  
PDF File  
2.14 MB

## 8) Sheriff

- a) **Description:** Purchase of K-9 from Aberdeen Police Department

**Contact:** Derek Sanders, Sheriff

**Action:** Move to authorize the Sheriff or designee to enter into a purchase agreement for \$15,000 with the Aberdeen Police Department to purchase a certified K-9 and his associated equipment for the Thurston County Sheriff's Office K-9 program.



BoCC-AIS-2024-04-16-SherifHeidiThomsen-3638.pdf  
PDF File  
352 KB

## 9) County Manager

- a) **Item Description:**

Commissioners will report on board work sessions and assigned committee meetings providing updates on actions taken as well as upcoming issues.

- b) **Item Description:**

The County Manager will review the Board of County Commissioners schedule for the upcoming weeks.

- c) **Item Description:**

Adjournment of the Board of County Commissioners meeting of April 16, 2024 .

**3:30 p.m.) Public Hearing**

**Dept:** Community Planning and Economic Development

**Description:** Public Hearing - Fair Board Reapportionment and Fairgrounds Fees

**Contact:** Jeremy Davis, Operations Manager

**Action:** Move to close the public hearing.

Move to approve an ordinance amending Thurston County Code Chapter 2.48 and Section 2.50.060 to change the structure of the Fair Board and Fair and Event Center Fees.



BoCC-AIS-2024-04-16-CommunityPlanningandEconomicDevelopment-JeremyDavis-0011.pdf  
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344 KB

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## 2024 Proclamations

January 9	Martin Luther King, Jr. Day – <i>January 15</i>
February 20	African American History Month – <i>February</i>
March 5	Women’s History Month – <i>March</i>
April 2	Child Abuse Awareness Month – <i>April</i> Volunteer Appreciation Month – <i>April</i>
April 16	Earth Day – <i>April 22</i>
April 30	Asian American and Pacific Islander Heritage Month – <i>May</i>
May 7	Public Service Recognition Week – <i>May 5-11</i>
May 21	Peace Officers Memorial Day – <i>May 15</i>
June 4	Pride Month – <i>June</i>
July 16	Thurston County Fair – <i>July 31-August 4</i>
August 6	Traffic Zero
August 20	Int’l Overdose Awareness Day – <i>August 31</i>
September 3	First Responders Day – <i>September 11</i>
September 17	Nat’l Hispanic Heritage Month – <i>September 15-October 15</i> Nat’l Voter Registration Day – <i>September 17</i>
October 8	Domestic Violence Awareness Month – <i>October</i>
October 22	Flood Awareness Week – <i>October 14-18</i>
November 5	Veteran’s Day – <i>November 11</i>

# THURSTON COUNTY

# Proclamation

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## Earth Day

**WHEREAS**, Earth Day provides an opportunity to increase community awareness and appreciation of the Earth’s natural environment, and serves as a reminder of the importance of environmental conservation and sustainability; and

**WHEREAS**, this year’s theme “Plant vs. Plastics” calls to advocate for widespread awareness on the health risk of plastics and calls for everyone – governments, citizens, and businesses – to take action for a healthier plant and brighter future; and

**WHEREAS**, Thurston County strives to provide regional leadership to enhance environmental sustainability for our citizens and future generations, and has signed onto the Thurston Climate Mitigation Plan, a regional agreement to significantly reduce climate polluting greenhouse gases while maintaining and improving our quality of life; and

**WHEREAS**, about 12 million metric tons of plastic end up in our oceans every year contributing to the Great Pacific Garbage Patch. Animals are seen where enormous patches of plastic waste are found, threatening the food chain; and

**WHEREAS**, Eli Sterling continues to organize the Procession of the Species in Thurston County, an event founded in 1995 to commemorate Earth Day and to support Congressional renewal of the Endangered Species Act. A grand example of sustainability, the Procession emphasizes the use of recycled, natural, and donated materials in the construction of the artistic treasures displayed in the parade; and

**WHEREAS**, this year’s Procession of the Species will take place on Saturday, April 27 at 4:30 PM through downtown Olympia; and

**WHEREAS**, more than five decades after the first Earth Day, billions of people have answered the call to protect the environment. Today, let us do so again by raising our voices and standing up for our planet and our future; and

**NOW THEREFORE, BE IT RESOLVED**, the Board of County Commissioners of Thurston County hereby proclaims April 22, 2024, as Earth Day in Thurston County, and encourages all residents to take part in this crucial movement to protect our Earth.

Adopted this 16<sup>th</sup> day of April 2024

BOARD OF COUNTY COMMISSIONERS

_____	_____
_____	_____
_____	

Citizen Advisory Boards & Commissions  
April 16, 2024

**I. Salary Commission**

4/6 – Letters sent to pool of names selected by lot by the Auditor’s Office.

4/12 – Deadline to respond.

4/16 – Appointment of the individual with the highest lot number – *no later than 4/30*.

**Current Vacancies**

<b>Board/Commission</b>	<b>Seat</b>	<b>Term</b>
Civil Service Commission	(1) Neither ‘Unaffiliated’ or ‘Independent’	2/16/2027
Fair Board	(5) District 3	4-year
	(6) District 3, At-Large	4-year
Historic Commission	(11) At-Large	4- year
	(12) At-Large	4-year
	(13) Alternate, District 1	4-year
	(14) Alternate, District 2	4-year
	(15) Alternate, District 3	4-year
Noxious Weed Control Board	(4) Weed District 4	4-year
	(5) Weed District 5	4-year
Salary Commission	(5) District 3	3/31/2025
	(7) Organized Labor Representative	4-year
	(9) Professional Personnel Management Representative	4-year
Solid Waste Advisory Committee	(4) City of Rainier Councilmember	3-year
Storm and Surface Water Advisory Board	(4) District 2	3-year
	(9) At-Large	3-year

## Citizens' Commission on Salaries for Elected Officials

**Contact:** Ruth Elder, Clerk of the Commission, Thurston County Human Resources, (360) 786-5135, [ruth.elder@co.thurston.wa.us](mailto:ruth.elder@co.thurston.wa.us)

**Website:** [Citizens' Commission on Salaries for Elected Officials website](#)

**Authority:** [RCW 36.17](#); [Code 2.118](#)

**Bylaws:** N/A

**Appointed by:** Board of County Commissioners

**Term length:** 4 years

**Term limits:** 2 terms

**Membership:** Ten members as follows: (1) Six of the ten commission members (two members living in each Commissioner's district) shall be selected by lot by the County Auditor from among registered voters. (2) Four of the ten commission members must be a resident of Thurston County and shall have had experience in the field of personnel management. Of these four members, one shall be selected from each of the following: business, professional personnel management, legal professional and organized labor. Members may not include any officer, official or employee of Thurston County or any of their immediate family members.

Name	Seat	Term Start	Term End
(1) Megan Walsh	District 1		03/31/2025
(2) Judith Oliver	District 1		04/25/2027
(3) William Thomas	District 2		04/25/2027
(4) Melissa Maanoa	District 2		03/31/2025
(5) <i>Vacant</i>	<i>District 3</i>		
(6) Mark Grindstaff	District 3		04/25/2027
(7) <i>Vacant</i>	<i>Organized Labor</i>		
(8) Cary Randow	Business Representative		04/25/2023
(9) <i>Vacant</i>	<i>Professional Personnel Management</i>		
(10) Peter Lindgren	Legal Professional		01/24/2027

## **DESCHUTES ESTUARY RESTORATION PROJECT INTERLOCAL AGREEMENT**

THIS DESCHUTES ESTUARY RESTORATION PROJECT INTERLOCAL AGREEMENT ("Agreement") is entered into this **DATE** by and among the State of Washington Department of Enterprise Services (DES), the State of Washington Department of Natural Resources (DNR), (together DES and DNR are referred to as the State), the Squaxin Island Tribe (Tribe), the County of Thurston (County), the City of Olympia (Olympia), the City of Tumwater (Tumwater), the Port of Olympia (Port), and the LOTT Clean Water Alliance (LOTT). Each is referred to individually as a "Party," and collectively as the "Parties."

### **INTRODUCTION**

#### **Background**

What is now Capitol Lake was originally the southern portion of the Deschutes Estuary, where freshwater from the Deschutes River mixed with saltwater from Budd Inlet over extensive tidal flats. Between 1949 and 1951, the State constructed a dam at 5<sup>th</sup> Avenue in Olympia to serve as a reflecting pool for the Washington State Capitol Campus. The 5<sup>th</sup> Avenue Dam blocked saltwater from the upper reaches of Budd Inlet and transformed the area upstream of the dam into Capitol Lake, a 260-acre freshwater lake fed by the Deschutes River. Capitol campus planners intended Capitol Lake to be part of the Washington State Capitol Campus, and it was designated a resource of the Capitol Campus under RCW 43.34.090 and RCW 79.24.710. DES (to include predecessor agencies) has had the responsibility to manage Capitol Lake throughout the lake's existence. The Deschutes River and Estuary, Capitol Lake, and Budd Inlet, together with the parks and trails that surround them, are an important visual and recreational resource for the community.

Each year, the Deschutes River and Percival Creek transport an estimated 35,000 cubic yards of sediment downstream. Before construction of the 5<sup>th</sup> Avenue Dam, this sediment could move freely into Budd Inlet. After construction of the dam, the vast majority of this sediment settles in Capitol Lake. Over time, the sediment captured upstream of the 5<sup>th</sup> Avenue Dam has accumulated up to 13 feet deep in some places – shallowing the lake and visibly altering conditions.

Capitol Lake also historically has violated water quality standards. Water quality monitoring began in the 1970s, and by 1985, the Thurston County Health Department permanently closed the historic swimming beach in Capitol Lake due to water quality impairments. Capitol Lake is and has been a focus of state and federal water quality improvement planning since the 1970s. The 5<sup>th</sup> Avenue Dam has been shown to be the single largest contributor to dissolved oxygen depletion in Budd Inlet.

The presence and persistence of invasive species in Capitol Lake has complicated its management. Since the 1980s, the State has employed a variety of strategies to address aquatic invasive species, but today more than a dozen different plant and animal invasive species are present. In response to finding the New Zealand mudsnail in Capitol Lake in 2009, the State officially closed Capitol Lake to all active public use.

For more than 50 years, public and private entities have attempted to address these and other environmental concerns regarding Capitol Lake and the Deschutes Estuary. For a wide variety of reasons, these efforts historically were unsuccessful or stalled.

### **Selection of the Estuary Alternative**

In 2018, DES began a process to evaluate long-term management alternatives for the waterbody. To evaluate the alternatives, DES used the Environmental Impact Statement (EIS) process. Through this process, DES carefully considered comprehensive technical analyses, evaluated benefits and costs of project alternatives, solicited feedback from key stakeholders, and reviewed public comments. In 2022, DES issued a final EIS identifying the Estuary Alternative as the preferred long-term plan. The Estuary Alternative involves removal of the 5<sup>th</sup> Avenue Dam, restoration of tidal flats and marsh habitat in the 260-acre basin, construction of physical assets such as a new 5<sup>th</sup> Avenue Bridge and boardwalks, and long-term management of sediment naturally transported into navigational areas of Budd Inlet.

Removal of the 5<sup>th</sup> Avenue Dam will also restore natural sediment transport processes. This will result in increased sediment accumulation in navigational areas of West Bay compared to existing conditions, more similar to the sediment processes that existed prior to dam construction. Sediment accumulation, if unaddressed, will affect commercial and recreational uses in West Bay including private marinas<sup>1</sup> and, to a lesser extent, the Port vessel berths.

At the direction of the Washington State Legislature, DES convened a Funding and Governance Work Group (FGWG) comprised of the Parties to explore long-term funding and governance options. The Parties considered several funding and governance options for long-term management of the restored Deschutes Estuary, and reached consensus as set forth in this Agreement.

### **Principles for Management of the Project**

The Parties recognize that the overall Project will contribute to the health of Budd Inlet and the Deschutes River watershed.

Estuary restoration will produce a range of ecological and economic benefits. Removing the dam, restoring tidal flows, and reintroducing native habitats will benefit ESA-listed salmon populations and the species that depend on them, including the Southern Resident killer whales. Birds, shellfish, and other native species are likely to proliferate in

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<sup>1</sup>The term "private marinas" include the following privately-owned businesses: Olympia Yacht Club, Fiddlehead Marina, Martin Marina, and One Tree Island Marina.

the estuary and become part of, the return of a more diverse ecosystem. Restoring the estuary also will restore public access to the water and enhance adjacent open space through new boardwalks, fishing piers, and trails. A new 5<sup>th</sup> Avenue Bridge will provide safer pedestrian and bicycle connectivity along the trail between Heritage Park and Deschutes Parkway. These new and improved amenities will benefit residents' quality of life and the experience of visitors to the region. The Squaxin Island tribe supports the Project, noting that restoring native habitat for fish and other culturally important species and reopening access to the water will renew cultural use of traditional lands and resources that were lost when the state built the dam. Finally, estuary restoration will complement and enhance the value of other investments among state, tribal, and local governments, public entities, and private organizations to restore the Deschutes River watershed, improve the health of Budd Inlet, and help address flooding risk to downtown Olympia related to sea level rise.

To be most successful, the Project must also help support a working, urban waterfront, with recreational and commercial boating. Maintaining a working waterfront and supporting infrastructure of recreational boating contributes to a dynamic, vibrant community and will produce and sustain public revenue streams from taxes and lease payments, support employment opportunities, and create public amenities that benefit all community members. The sediment management program set forth in this ILA will enable the restored estuary and built environment downstream to coexist.

The Parties, working through the FGWG, agreed on the following guiding principles to support the process of identifying issues and developing proposed solutions:

- The process should have dedicated and secure funding sources.
- Those who contribute to the problem should participate in funding or paying for the solution.
- Those who benefit from the solution should participate in funding or paying for the solution.
- The process should have a shared distribution of costs.
- The State should participate.
- Solutions should be watershed-wide in scale.
- The process should establish manageable long-term governance.
- The Parties should commit to a long-term collaborative process.
- Administration of the project should be adequately resourced.
- Solutions must support the goals and objectives of the long-term management plan and the future of the overall watershed.

From these guiding principles, the Parties agreed upon a three-part structure for governing and funding the Deschutes Estuary restoration:

1. The State will be responsible for funding the capital costs of design, permitting, and construction of the estuary restoration, which recognizes that the State constructed the 5<sup>th</sup> Avenue Dam and has had management responsibility for Capitol Lake since that time.
2. After construction is complete, the State will transfer ownership of specific physical assets to other Parties. This transfer helps to achieve the goal of creating a manageable long-term governance structure; after the physical assets are conveyed, the only remaining item for joint governance is sediment management in West Bay.
3. The Parties will share in administering, funding, and implementing the maintenance dredging that will be needed in West Bay to maintain navigation and avoid significant adverse impacts<sup>2</sup> to the private marinas and Port, for the term of this ILA. This shared responsibility reflects the Parties' recognition that the restored estuary will provide significant benefits to the Parties and the broader community.

## **AGREEMENT**

Based on the foregoing, which is incorporated into and considered part of this Agreement, the Parties agree to enter into an Interlocal Agreement pursuant to Chapter 39.34 RCW, the Interlocal Cooperation Act, as follows:

### **1. Purpose and Conceptual Overview.**

The purpose of this Agreement is to describe and formalize the role of each Party in funding and governance for the restored estuary. The Deschutes Estuary Restoration is referred to herein as "the Project," and is generally described as the Estuary Alternative in Chapter 2 the EIS.<sup>3</sup> It should be noted that the design of the Project will be significantly advanced from the Estuary Alternative in the EIS but the description contained in the EIS is a good representation of key components of the Project.

Construction and management of the Project will include the following elements:

- The State will fund and administer planning, design, and estuary restoration and construction of physical assets.
- The State will transfer specific physical assets and/or long-term management responsibilities of these physical assets to individual Parties after construction.

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<sup>2</sup> Refer to Section 8.1.1 for a description of significant adverse impacts as it has been defined for this Interlocal Agreement.

<sup>3</sup> Provide specific citation to the EIS for the best description of the Project.



- The Parties will fund and govern long-term sediment management in navigational areas of West Bay in accordance with this Agreement.

## **2. Parties/Notice.**

### **2.1. Project Manager.**

The State, acting through DES, shall act as Project Manager for design, permitting and construction of the estuary restoration portion of the Project.

The State, acting through DNR, shall act as Project Manager for long-term administration of the sediment management portion of the Project, after construction and subject to the rights and obligations set forth in this Agreement.

The Project Manager's office shall be the principal office for the Project, and the Project Manager is designated and authorized to receive any notices required to be given regarding the Project.

### **2.2. Finance Manager.**

\_\_\_\_\_ shall act as Finance Manager for the Project, with duties described in Section \_\_\_\_\_, below.

### **2.3. Party Representatives.**

Each Party shall designate a person authorized to receive notice and to represent the Party's interests related to the Project. Each Party shall provide the name, email, and contact information of the representative to the Project Manager. If no representative is or has been designated by a Party, notice shall be delivered to any person or office authorized to receive service of process on behalf of the Party.

## **3. Term**

### **3.1. Effective Date.**

This Agreement is effective when (i) all Parties have duly executed, (ii) the Agreement has been filed with the Thurston County Auditor pursuant to RCW 39.34.040, and (iii) the Agreement has been approved pursuant to RCW 39.34.050.

### **3.2. Expiration Date.**

This Agreement will expire on December 31, 2050, unless some or all Parties agree in writing to renew for an additional term.

### 3.3. Extension.

Prior to the end of 2045, the Project Manager will convene the Parties to determine whether to extend the Agreement, and if so, on what terms and with which Parties. In this meeting, the Parties must consider the then-current state of navigation in West Bay.

## 4. Withdrawal or Renegotiation.

### 4.1. Withdrawal or Renegotiation for Cause.

If one or more of the following specific events occur, any Party will have the right to require renegotiation of the terms of the Agreement, and the right to withdraw from the Agreement without further financial obligations:

**4.1.1.** Remediation of contaminated sediment in lower Budd Inlet is postponed indefinitely or cannot occur, in which case, the Project may also need to be postponed, reenvisioned, redesigned, or cancelled.

**4.1.2.** DES fails to receive funding for construction of the Project.

### 4.2. Renegotiation for Cause.

If one or more of the following specific events occur, any Party will have the rights as specified:

**4.2.1.** Sediment management costs increase to a degree that funds will be exhausted prior to the expiration of the initial term of the Agreement (2050). If this occurs, the Project Manager will reconvene the Parties to determine an approach that will avoid significant impacts to navigation through the initial term of the Agreement.

Note: Total planning-level cost estimates and the resulting individual allocations provided in Attachment 1 are stated in 2022 dollars and will be adjusted to include an annual inflationary rate.

**4.2.2.** The private marinas fail to provide funding sufficient to meet their obligations under a formal dredging program under the No Action Alternative (i.e., funding sufficient to dredge at the frequency needed to avoid significant adverse impacts<sup>4</sup> and meet the terms of DNR leases if the 5<sup>th</sup> Avenue Dam were left in place. If this occurs, the Project Manager will reconvene the Parties to consider modification of the sediment management portion of the Project.

**Commented [A1]:** For future FGWG discussions:  
Annual inflationary rate  
Process to inflate  
Whether dollar amounts in ILA are shown in 2022 or 2024 dollars.

<sup>4</sup> Refer to Section 8.1.1 for a description of significant adverse impacts as it has been defined for this Interlocal Agreement.

#### **4.3. Withdrawal For Convenience.**

In addition to the rights set forth in Section 4.1, a Party may withdraw from the Agreement at any time, provided that before withdrawing, the withdrawing Party provides funds sufficient to satisfy all financial obligations of the withdrawing Party for the term of the Agreement in effect at the time of withdrawal, and the withdrawing Party has satisfied all specific performance obligations under the Agreement.

#### **5. Non-Project Conditions/Port Clean-Up.**

Prior to and separate from construction of the Project, the Port will implement a project to remediate known sediment contamination in lower Budd Inlet to conditions satisfactory to the Washington State Department of Ecology and the US Army Corps of Engineers. This Port-led remediation is separate from the Project and is not part of the ILA. However, the 5<sup>th</sup> Avenue Dam will not be removed until the Port-led remediation in West Bay is complete. The Port is currently targeting the late 2020s for remedial action throughout lower Budd Inlet. The Port and the State will coordinate efforts to minimize potential conflicts and redundant efforts and to maximize the benefit to the Deschutes Estuary and Port area. This coordination will help ensure that the Port-led remediation and DES-led estuary construction do not interfere with each other and, to the extent feasible, complement each other.

#### **6. Project Design, Permitting, and Construction.**

##### **6.1. Planning and Design.**

The State, acting through DES, will fund, manage, and have authority over design and permitting of the project. Initial funding for design and permitting was appropriated during the 2023 legislative session and work is underway. Assuming additional needed funding is secured, this phase will conclude in approximately 3-5 years. During the design and permitting process, DES will coordinate with Olympia on the design of the 5<sup>th</sup> Avenue Bridge and with Tumwater on the South Basin boardwalks to ensure that these physical assets meet design standards and are acceptable to the receiving Party, and that the process used to approve design of the asset is acceptable to the receiving Party. DES will coordinate with the Squaxin Island Tribe to develop the estuary restoration design, incorporate tribal knowledge and lessons learned on other similar projects, and to ensure that design of the asset is acceptable to the Squaxin Island Tribe, which may oversee management of the constructed habitat.

##### **6.2. Restoration and Construction.**

The State, acting through DES, will fund, manage, and have authority over physical restoration of the estuary and construction of physical assets (together "construction funding"). If construction funding is secured without delay,

construction of the Project could begin in the late 2020s. The State, acting through DES, DNR, or a designee, will manage and have authority over construction, which is estimated to occur over a 7- to 8-year period.

### 6.3. Transfer of Assets.

The State will convey or transfer certain physical assets to individual Parties after construction is complete in accordance with Table 1, below. Each transfer will be governed by a separate agreement between the State and the receiving Party. Upon transfer of a physical asset, the receiving Party will have full ownership in perpetuity, to include all maintenance responsibility and risk of loss.

**Table 1. Transfer and Governance Responsibilities of Physical Assets**

Receiving Entity	Asset/Governance Responsibility	Time of Transfer
State of Washington	Maintain constructed infrastructure to support boating, fishing, recreation in estuary, as needed. Staffing decontamination stations. Maintain Middle Basin boardwalks. Bathymetric surveys, design, permitting, contract management for maintenance dredging outside of federal navigation channel and turning basin and port vessel berths.	Upon construction completion
City of Olympia	New 5 <sup>th</sup> Avenue Bridge	Upon construction completion
City of Tumwater	South Basin boardwalks	Upon construction completion
Port of Olympia	Bathymetric surveys, design, permitting, contract management for maintenance dredging in port vessel berths. Lead coordination with USACE on maintenance dredging in federal navigation channel and turning basin.	Upon construction completion
Squaxin Island Tribe	Participate in implementing Habitat Enhancement Plan for constructed habitat in the 260-acre basin, formerly Capitol Lake	Upon construction completion

Receiving Entity	Asset/Governance Responsibility	Time of Transfer
Thurston County	None identified	N/A
LOTT	None identified	N/A

## 7. Estuary Administration and Management.

The State will be responsible for management of the restored estuary and for expenses related to such management except expenses related to sediment management in navigational areas as described in Section 8, below, or expenses related to assets that have been conveyed to other entities.

## 8. Sediment Management Funding and Governance.

The Parties will collectively fund and govern sediment management in navigational areas of West Bay during the term of this Agreement. "Sediment management," as used herein, includes only the following: bathymetric surveys at least annually at the private marinas and marina access areas to evaluate sediment accumulation; sediment removal (dredging), contract management (which includes design and permitting); and maintenance dredging (which includes disposal of dredged material).

### 8.1. Maintenance Dredging Assumptions and Estimates.

- 8.1.1. Maintenance dredging will occur when required to prevent significant adverse impacts to the navigational areas of West Bay. "Significant adverse impacts" are when any one of the following criteria occur:
  - (a) Large vessels accessing the Federal Navigation Channel and Port of Olympia have to wait more than four (4) hours for channel access due to water depth and low tide conditions caused by sediment deposition on more than one consecutive occasion;
  - (b) more than 10% of anticipated small craft vessels at any single marina are unable to access leased moorage due to shallowed water depth caused by sediment deposition; or
  - (c) any applicable law or regulation requires dredging to be performed.
- 8.1.2. Numerical modeling conducted for the EIS suggests that maintenance dredging to avoid significant impacts to navigation from sediment accumulation will be needed in areas of the West Bay of Budd Inlet on an average and approximated frequency of every 6 years. The actual rate of sediment accumulation is highly dependent on river flow conditions, which vary.
- 8.1.3. Estimates conservatively assume that removal of the 5<sup>th</sup> Avenue Dam begins in 2033, which is the earliest that removal could occur given the design and permitting process and construction activities that are required

before dam removal. The total estimated sediment management costs also assume three dredging events, given the 18-year duration between 2033 and 2050 and the estimated 6-year frequency of maintenance dredging that is based on hydrodynamic and sediment transport numerical modeling conducted for the EIS. If removal of the 5<sup>th</sup> Avenue Dam is delayed such that there is certainty that fewer than three dredging events are anticipated to occur within the term of the Agreement, the Parties may adjust total estimated sediment management costs and annual payments.

**8.1.4.** The Parties have negotiated this Agreement using planning-level cost estimates. Civil, environmental, and coastal engineers developed planning-level cost estimates using costs for similar work on recent projects, hydrodynamic and sediment transport numerical modeling in the EIS that predicts sediment accumulation under the Estuary Alternative, and triggers to initiate dredging events (see footnote 3). Planning-level cost estimates also assume in-water disposal of the dredged sediment, based on current sediment data and a projection that invasive species will not persist in the material to be dredged.

**8.1.5.** Planning-level cost estimates are in 2022 dollars, are based on conceptual design, and have an accuracy variation of minus 25% to plus 35%, consistent with Class 4 estimates prepared using standards established by the Association for the Advancement of Cost Engineering. The cost estimates are to support planning efforts and include a 15-percent contingency.

**8.1.6.** Calculations of total estimated sediment management costs assumes funding for each phase is secured without delay.

## **8.2. Cost Allocation.**

Costs for sediment management above those costs associated with dredging of the No Action Alternative (baseline) (i.e., the increase in sediment accumulation in navigational areas of West Bay as a result of dam removal, atop the baseline amount of sediment accumulation that would already pass through the 5<sup>th</sup> Avenue Dam and settle in these areas) are allocated among the Parties on a percentage basis as set forth in Table 2 below.

**Table 2: Cost Allocation and Payments.**

<b>Party</b>	<b>Percentage Allocation</b>	<b>Total Payment (in 20XX dollars)</b>	<b>Annual Payments (in 20XX dollars)</b>
State of Washington			
Squaxin Island Tribe	0.00		0.00
Thurston County			
City of Olympia			
City of Tumwater			
LOTT			
Port of Olympia			

The following measures have been implemented to increase certainty that funding will remain available for sediment management for the term of this agreement.

- The planning-level cost estimates have an accuracy variation of minus 25% to plus 35%. The higher end of the planning-level cost estimate range (+35%) has been used.
- Annual payments will begin once the State has secured construction funding. This will likely be more than a decade before the first dredge event is triggered. Interest will accrue during this time, and continually through 2050. This interest will create additional funds in the account.
- The Parties cannot adjust annual payments downward during the initial term of this agreement, even if actual sediment management costs are less than expected in the initial dredge event. Holding the total contributions consistent with Table 2 will increase certainty that funds will be available while acknowledging that dredging frequency, environmental conditions, and costs could vary over the initial Agreement term.

### 8.3. Finance Manager.

The Finance Manager shall collect and disperse funds from the account as set forth herein. Attachment “ ” hereto is the Deschutes Estuary Finance Management Agreement setting forth the rights and responsibilities of the Parties, to include the Party acting as Finance Manager, with respect to payments to the Account, investment of moneys held in the Account, disbursement of moneys from the Account, and fiduciary duties.

**Commented [A2]:** Further details when a finance mechanism has been selected. Details will include how to authorize payments, audit rights, etc..

### 8.4. Annual Payments.

Each Party's annual payment is determined by dividing the Party's total allocated sediment management costs for the initial term of the Agreement by the number of years (partial years count as a full year) remaining in the initial agreement term of the Agreement at the time of the deposit and is shown in Table 2. Each Party agrees to make annual payments (determined as above) on or before December 31 of each year, through the end of the Agreement term. Each allocated payment shall be subject to an increase of (options are X% or CPI) per annum, subject to further adjustments.

### 8.5. Initial Deposits.

The Project Manager will notify the Finance Manager and all Parties when the State has formally secured construction funding for estuary construction and an ACCOUNT (t/b/d) has been created; within 90 of receiving such notice, but no earlier than [date TBD], each Party will make an initial deposit with the Finance Manager of an amount equal to the Party's annual payment. The initial deposit is in addition to the Party's first annual payment made pursuant to Section 8.4.

### 8.6. Sediment Monitoring and Dredge Events.

**8.6.1. Monitoring/Reporting.** The Project Manager will ensure that, at least annually, a bathymetric survey is completed in navigational areas of West Bay. Upon completion, the Project Manager shall review bathymetric surveys and shall share bathymetric data with each Party along with a summary describing how it relates to timing and scope of future dredge events.

**8.6.2. Consultation.** Throughout the Project, and particularly in response to bathymetric surveys that indicate that a dredge event may be triggered, the Project Manager will evaluate whether adaptive management measures can be implemented that will reduce the scope, cost, or impact of future dredge events. The Project Manager may coordinate directly with the private marinas in this process. The Project Manager may implement adaptive management measures that result in a reduction to overall sediment management costs.



**8.6.3. Preliminary Determination.** When, after consideration or implementation of adaptive management measures, the Project Manager determines that the criteria for a dredge event have been met and a dredge event is necessary, the Project Manager shall provide the Parties with a written dredge event proposal that describes the scope and timing of the dredge event with sufficient data and information to allow the Parties to evaluate the proposal.

**8.6.4. Objection and Final Determination.** The Parties shall have 45 days from receipt of the dredge event proposal to approve or object. A Party's failure to object within 45 days will be considered approval. A Party may object to a dredge event proposal only on the following grounds: (a) the data do not support a finding that the criteria for a dredge event have been met; (b) adaptive management measures have not been sufficiently considered or implemented; or (c) there are insufficient funds to pay for the proposed dredge event. Unwillingness to expend funds from the ACCOUNT NAME, by itself, is not a sufficient ground for objecting to a proposed dredge event. Any objection shall be in writing, shall provide data and information sufficient to allow the Project Manager and other Parties to evaluate the objection, and shall be sent to all Parties. Upon receipt of an objection to a notice of dredge event, the Parties shall confer and attempt to reach consensus. The Project Manager shall make the final determination regarding whether to proceed with the proposed dredge event, subject to Section 9 (Disputes/Enforcement).

#### **8.7. Dredge Event Reporting and Adjustments.**

After each dredge event, the Project Manager will provide the Parties with final costs and a summary report for the dredge event and for the Parties to consider alterations to the sediment management program and/or to implement other adaptive management practices for future dredge events. Adjustments to total sediment management costs and/or annual payments will trigger the renegotiation rights described in Section 4 only if adjustments cause projected costs to increase above agreed-upon allocations.

#### **8.8. Refund of Excess Funds.**

If excess funds remain upon the expiration or termination of the ILA and unless otherwise agreed to, each Party will be entitled to receive a refund of such excess funds based on a pro-rata calculation of the amounts paid.

## **9. Disputes/Enforcement.**

### **9.1. Each Party May Enforce.**

The Parties agree and recognize that this multi-party Agreement is the result of complex negotiations among individual entities each with individual interests and constituencies, and that the provisions of this Agreement are interdependent and represent a balancing of those individual interests and constituencies. The Parties further agree that the restoration of the Deschutes Estuary and maintenance of a working waterfront and recreational boating will provide each entity with public benefits, but to secure those public benefits, each obligation the Parties will make to each other must be fulfilled. Accordingly, the Parties agree that they each have authority to enforce the obligations of each other Party under this Agreement, to include requiring specific enforcement of such obligations.

### **9.2. Decision Making.**

If a decision of the Parties regarding a matter not addressed in this Agreement is required, the procedure set forth in Section 8.6 relating to dredge events shall apply to the extent feasible.

### **9.3. Disputes.**

Any disputes under this Agreement shall be resolved by negotiation, if possible. If impasse is reached, the Parties shall confer on the best format and venue to resolve the impasse. If the parties cannot agree on a dispute resolution process, the matter shall be decided by a panel of three arbitrators, one appointed by the Party(ies) initiating an arbitration request, a second appointed by the Party(ies) responding to the request, and the third by the two appointed arbitrators. Hourly payments for the arbitrators' time shall be in arrears. The ruling of the arbitration panel shall be binding, subject to judicial review. Any dispute relating to appointment of arbitrators shall be decided by petition to the Superior Court for Thurston County, Washington.

### **9.4. Choice of Law/Venue.**

This Agreement and any dispute arising under this Agreement shall be governed by the laws of the State of Washington. Venue for entrance of a decision of the dispute resolution panel and for any other reason shall lie exclusively in the Superior Court for Thurston County, Washington.

## **10. Administrative.**

### **10.1. Authority.**

This Agreement shall be executed on behalf of each Party by a duly authorized signatory, and pursuant to an appropriate motion, resolution, or ordinance of

each Party. By executing below, each Party represents that it has authority to enter into and be subject to the terms of this Agreement.

**10.2. Meetings.**

There are no regularly scheduled meetings of the Parties. Any Party may call a meeting of the Parties by written request to the Project Manager, copying all other Parties, that provides the purpose of the meeting. The Project Manager shall be responsible for scheduling and organizing the meeting in accordance with all applicable laws.

**10.3. Public Records.**

Each Party shall be responsible for maintaining its own records and responding to public records requests.

**10.4. Indemnification of Employees and Agents.**

All actions taken in furtherance of the purpose of this Agreement within an employee's scope of work shall be considered actions taken in the course of employment entitling the employee to indemnification by the employee's employer.

**10.5. Execution.**

This Agreement may be executed in counterpart and/or by electronically-transmitted signature (pdf or similar).

**10.6. Filing.**

Upon execution by all Parties, this Agreement shall be filed as required by RCW 39.04.040.

**10.7. Entire Agreement/Amendments.**

This Agreement represents the entire and sole agreement of the Parties with respect to the subject matter herein, and may be amended or modified only by written agreement of all affected Parties.

**10.8. Assignment.**

This Agreement shall be binding on each Party and their successors and may not be assigned in whole or in part without the written consent of all Parties.

**10.9. No Third Party Beneficiaries.**

This Agreement is not intended to create rights in, or to grant remedies to, any third party as a beneficiary to this Agreement or any of its provisions.

#### **10.10. Waiver.**

The failure to require cure of a breach of any provision of the Agreement shall not be deemed a waiver of any subsequent breach, whether of the same or different provision.

#### **10.11. Force Majeure.**

If a Party, to include the Project Manager, is rendered unable by Force Majeure to carry out, in whole or part, its obligations under this Agreement and such Party gives notice and full details of the event to the other Parties as soon as practicable after the occurrence, then during the pendency of such Force Majeure event but for no longer period, the obligations of the Party affected by the event (other than the obligation to make payments due for performance prior to the event) shall be suspended to the extent required. The Party claiming a Force Majeure event shall remedy the event as soon as possible.

#### **10.12. Severability.**

If any portion of this Agreement is adjudged to be invalid by a court of competent jurisdiction, such adjudication shall not affect the validity of any remaining section, part or provision of this Agreement.

### **Signatures**

City of Olympia –

City of Tumwater –

Department of Enterprise Services –

Department of Natural Resources –

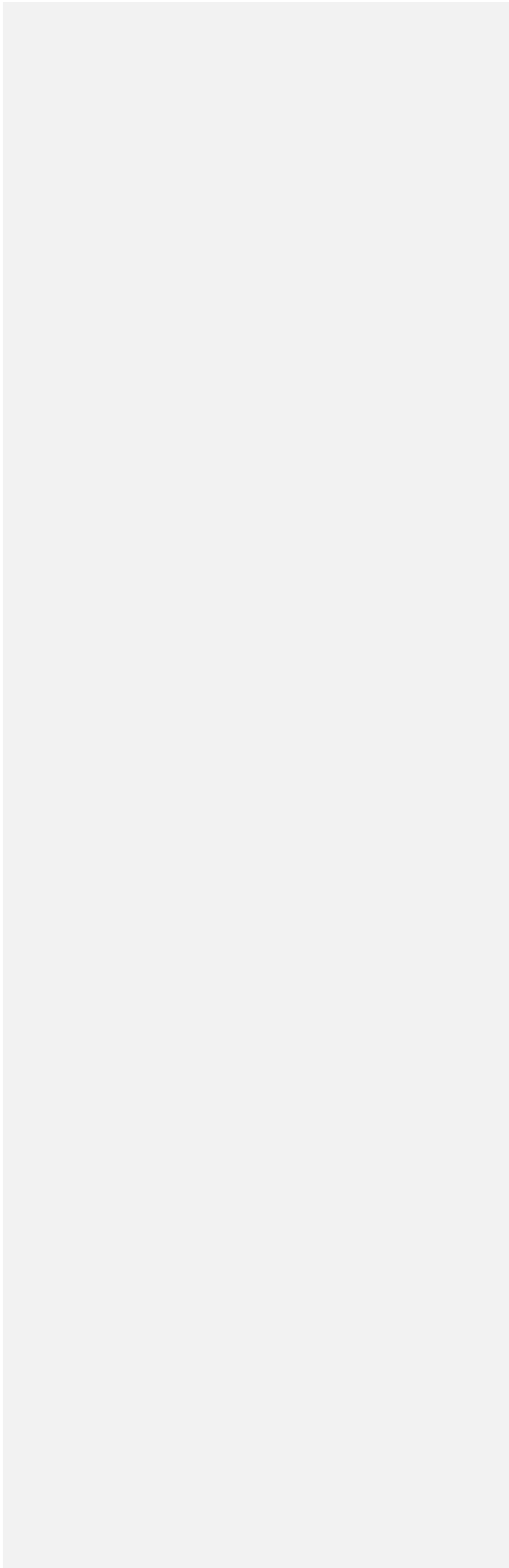
LOTT –

Port of Olympia –

Thurston County –

Squaxin Island Tribe –

Exhibit



The values in this table are based on planning-level cost estimates and are provided in 2022 dollars.  
The allocations and associated cost estimates are provided for the term of the FGWG agreement only – through 2050.

This table of recommended allocations provides and equalizes the recommended allocations for sediment management across the FGWG. It recognizes that: (1) all parties benefit from estuary restoration and/or implementation of the Dredging Program; and (2) that differences in the magnitude of benefits cannot be mathematically derived but that the project would be beneficial to each entity. Importantly, the City of Olympia is shown in an increased capacity from the remaining FGWG members given that the working waterfront and recreational boating infrastructure exists within the city limits and is adjacent to downtown Olympia; and arguably, the City of Olympia may derive the most direct benefits.

Recommended Sediment Management Allocations

Entity <sup>(i, ii)</sup>	Allocation % for Maintenance Dredging of Increased Sediment from Estuary Alternative <i>(above No Action Alternative)</i>	Cost Estimate for Maintenance Dredging Equivalent to No Action Alternative <sup>(iii)</sup>	Cost Estimate for Maintenance Dredging of Increased Sediment from Estuary Alternative <i>(above No Action Alternative)</i> <sup>(iv)</sup>	Total Cost Estimate for Sediment Management <i>(No Action Alternative + Increased Maintenance Dredging from Estuary Alternative)</i>	Estuary Construction + Total Sediment Management	Allocation % Total <i>(Estuary Construction + Sediment Management)</i>
Olympia	~23.1%	\$0	\$4,297,000	\$4,297,000	\$4,297,000	2%
LOTT	~15.4%	\$0	\$2,865,000	\$2,865,000	\$2,865,000	1%
Port	~15.4%	\$362,000	\$2,865,000	\$3,227,000	\$3,227,000	1%
Tumwater	~15.4%	\$0	\$2,865,000	\$2,865,000	\$2,865,000	1%
Marinas	0.0%	\$5,800,000	\$0	\$5,800,000	\$5,800,000	2%
Thurston County	~15.4%	\$0	\$2,865,000	\$2,865,000	\$2,865,000	1%
State	~15.4%	\$0	\$2,865,000	\$2,865,000	\$249,545,000	92%
Squaxin Island Tribe	0.0%	\$0	\$0	\$0	\$0	0%
	~100.0%	\$6,162,000	\$18,622,000	\$24,784,000	\$271,464,000	100%

Notes:

- i All values included in this table are represented in 2022 dollars and may exhibit rounded values. In the future, an annual inflationary rate (3% or Consumer Price Index equivalent) is to be included by the FGWG in each entities’ annual payment of allocated maintenance dredging funding; those inflation costs are not reflected in this table. All values reflect planning-level cost estimates based on conceptual design (see Section 5.e).
- ii The total cost to manage sediment represented in this table assumes removal of the 5<sup>th</sup> Avenue Dam occurs in 2033, which is the soonest that phased dam removal could begin – through 2050, which is the end date of the existing agreement. Based on hydrodynamic and sediment transport numerical modeling conducted for the EIS, maintenance dredging is assumed to occur at an approximately 6 year frequency, resulting in an estimated three dredge events in the 18-year duration between 2033 and 2050. These planning level costs reflect these assumed dredging events.

Delays in 5th Avenue Dam removal would reduce the duration within this agreement where sediment conditions in West Bay have changed from existing conditions. If removal of the 5th Avenue Dam is delayed (particularly if the delay is long enough to eliminate an assumed dredge event), the total cost estimates for sediment management provided herein could be adjusted. Potential future adjustments in the total cost of sediment management will be reflected in the total costs allocated to each FGWG member, but not the percentage allocation of each FGWG.

Each FGWG member's annual payment is determined by dividing the member's total allocated sediment management costs for the initial term of the ILA by the number of years (partial years count as a full year) remaining in the initial agreement term of the ILA at the time of the payment's deposit. The number of years used to determine the annual payment is dependent upon the State's formal appropriation of construction funding for the Estuary Alternative construction. Each FGWG member is responsible for its annual allocated costs; however, they may divide over the initial term of the ILA, as is described in Section 5.b, Total Estimated Costs and Payment Allocation, of the ILA. These costs assume that the Port of Olympia has already dredged existing contaminated sediment and has reestablished authorized depths in West Bay. That dredging of contaminated accumulated sediment is not associated with this project, and those costs are not included in the costs represented here. The planned Port of Olympia dredging of contaminated sediments is also expected to allow the future dredged material under the No Action Alternative (and Estuary Alternative) to be disposed of in-water.

The planning-level costs presented herein assume in-water disposal of dredged material. The maintenance dredging costs would significantly increase if dredged material was determined not suitable for in-water disposal.

Bathymetric surveys would be conducted to adjust dredging events to actual environmental conditions (surveys would occur annually, at a minimum). These tables do not include costs for the annual bathymetric surveys. Costs associated with design and permitting (and associated efforts) are not included in these tables either, and they are currently assumed to be an in-kind contribution from the FGWG as outlined in Section 2.d.

2050 is the last year of existing leases with private marinas in West Bay; these estimates align with that timeline and do not speculate about continued maintenance dredging past that time, potential new funding sources or different shared agreements, or potential marina decisions to relocate.

- iii This represents the estimated non-project costs associated with dredging impacted areas of West Bay based on sedimentation rates and patterns modeled for the No Action Alternative, assuming a formal dredging program with the same dredging triggers as defined for the Estuary Alternative. Numerical modeling shows that approximately 65% of the sediment would be dredged from the Federal Navigation Channel and turning basin; funding for that dredging is the responsibility of the U.S. Army Corps of Engineers (USACE). USACE-provided funding (for dredging equivalent to the No Action Alternative, or for increased sediment management under the Estuary Alternative, as described below) has not been included in this table at the request of the FGWG. USACE funding for dredging is a critical component of maintaining navigation in West Bay.
- iv These costs reflect the increased maintenance dredging costs beyond those that would be incurred by others under the No Action Alternative to avoid significant impacts to navigation in West Bay. Dredging in the FNC and turning basin, including additional dredging requirements resulting from the project, is the responsibility of the USACE and those costs are not included herein. Maintenance dredging needs equivalent to the No Action Alternative in impacted areas of West Bay would continue to be the responsibility of the Port of Olympia, private marinas, and the USACE; additional dredging requirements shown in this estimate, resulting from the project, would be the shared responsibility of members of the FGWG.

# Power Of County Legislative Authority To Enter Into Contract That Binds The County Legislative Authority In The Future

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AGO 2012 No. 4 - May 15 2012

*Attorney General Rob McKenna*

## **COUNTIES—COUNTY COMMISSIONER—CONTRACT—LEGISLATIVE AUTHORITY—Power Of County Legislative Authority To Enter Into Contract That Binds The County Legislative Authority In The Future**

A county legislative authority is generally prohibited from entering into contracts that bind the future legislative actions of the county. The application of this principle depends upon a distinction between actions that are legislative in nature and those that are merely administrative or proprietary.

May 15, 2012

The Honorable Steven J. Tucker  
Spokane County Prosecuting  
1115 W Broadway Avenue  
Spokane, WA 99260-0270  
Dear Prosecutor Tucker:

Attorney Cite As:  
AGO 2012 No. 4

By letter previously acknowledged, you have requested an opinion from this office on the following questions, paraphrased for clarity:

- 1. Are there legal constraints on the power of a county legislative authority to circumscribe the legislative authority of future members of the body by entering into contractual commitments which would remain binding on the county for some period after the end of the terms of the current members of the body?**
- 2. Would a series of agreements enclosed in your request, previously executed by the Spokane County board of commissioners, impermissibly bind future members of the board who might wish to change the policy choices represented by the agreements?**
- 3. Could a county commissioner be held liable for tortious interference with a contract if the commissioner exercises his/her legislative functions in a manner inconsistent with contractual agreements previously entered by the board of commissioners?**

### **BRIEF ANSWER**

The case law establishes that boards of county commissioners may not take actions that impair the core legislative powers of their successors in office. The law draws a distinction



between “core legislative powers” of a legislative body, and those powers that are more properly described as “administrative” or “proprietary.” Legislative bodies may not contractually bind their successors with regard to the former, although they may do so as to the latter. The case law, however, does not establish the precise limits of these constraints. We accordingly respond to your first question by examining the state of the law regarding these constraints.

We respectfully decline to answer your second question. The opinions process is designed to provide legal guidance with respect to issues of law, rather than to resolve disputes regarding specific factual circumstances. In this regard, unlike the judicial process, the opinions process is not suited to gathering and examining all of the facts that may be relevant to a particular situation. We answer your third question by providing guidance relating to the elements of tortious interference.

## ANALYSIS

### **1. Are there legal constraints on the power of a county legislative authority to circumscribe the legislative authority of future members of the body by entering into contractual commitments which would remain binding on the county for some period after the end of the terms of the current members of the body?**

The Washington Supreme Court has long noted “the principle that one board of county commissioners cannot enter into contracts binding upon future boards of commissioners.” *State ex rel. Schlarb v. Smith*, 19 Wn.2d 109, 112, 141 P.2d 651 (1943). Although the existence of such a limitation on contractually binding the decisions of future county legislative authorities is clear, we noted in an earlier opinion that the parameters of this limitation are not well defined. AGO 1974 No. 21, at 7. The statement is equally true 38 years later.

Applying the principle that contracts cannot bind future boards of commissioners is complicated, because county commissioners constitute the legislative body of the county, but also perform functions that are more properly described as executive or administrative. *See, e.g., Durocher v. King Cnty.*, 80 Wn.2d 139, 152, 492 P.2d 547 (1972) (distinguishing between the legislative and administrative functions of a county legislative authority). For example, the basic powers of a county legislative authority are listed in RCW 36.32.120, and that statute comprises both legislative acts (licensing, levying taxes, enacting police and sanitary regulations) and administrative functions (erecting and repairing county buildings, building and maintaining roads, managing county property).

The clearest principle we can discern from a study of the case law is that county commissioners may not bind the “core” legislative functions of future boards, but do have the authority to enter into contracts or make administrative arrangements that carry out the executive functions of the board, even though some of these arrangements will inevitably limit the freedom of future boards to make different administrative choices. The analytical difficulty is in identifying which county functions are “legislative” in nature.

[original page 3]

An authoritative treatise articulates this principle by explaining:

Respecting the binding effect of contracts extending beyond the terms of officers acting for the municipality, there exists a clear distinction in the judicial decisions between governmental and business or proprietary powers. With respect to the former, their exercise is so limited that no action taken by the governmental body is binding upon its successors, whereas the latter is not subject to such limitation, and may be exercised in a way that will be binding upon the municipality after the board exercising the power shall have ceased to exist.

10A Eugene McQuillin, *The Law of Municipal Corporations* § 29.102 (3d ed. 2009).

Washington cases offer little guidance as to which contractual provisions might be regarded as legislative, and which therefore cannot bind future legislative bodies, and which are administrative or proprietary, and therefore are not so limited. This is because the resolution of specific cases often turns on specific statutory grants of authority, rather than on the

application of the general principle that a contract may not bind the future exercise of legislative authority. For example, *Schlarb* concerned an agreement between King and Pierce counties to confine and improve the White River. *Schlarb*, 19 Wn.2d at 111. When King County declined to levy a tax pursuant to the agreement, Pierce County sued to compel action under the contract. King County argued that the contract was against public policy based upon “the principle that one board of county commissioners cannot enter into contracts binding upon future boards of commissioners.” *Id.* at 112. The Washington Supreme Court held, however, that the general principle against binding future boards was overcome by a specific statute authorizing counties to contract with one another for the improvement, confinement, and protection of rivers and banks. *Id.* at 113. Although the court recited the rule regarding binding future boards of commissioners, the case was resolved based upon a statutory enactment and therefore provides no guidance regarding your question. *See also Richards v. Clark Cnty.*, 197 Wash. 249, 252-53, 84 P.2d 1009 (1938) (rejecting challenge to issuance of bonds to be repaid by future tax revenue on the basis that the legislature had statutorily authorized counties to commit future revenue to the purpose).

In two cases, our supreme court has entertained challenges to contracts based upon the argument that they were entered into by “lame duck” boards, improperly attempting to bind future commissioners to the arrangement. *Roehl v. Pub. Util. Dist. 1*, 43 Wn.2d 214, 233-34, 261 P.2d 92 (1953); *King Cnty. v. U.S. Merchants’ & Shippers’ Ins. Co.*, 150 Wash. 626, 274 P. 704 (1929). By concentrating on the “lame duck” issue, neither the *Roehl* nor the *King County* cases offer any significant analysis as to when a contract might impermissibly bind future boards, absent the circumstance of the commitments being made near the end of the current board’s term of office. *Roehl*, 43 Wn.2d at 233-34; *King Cnty.*, 150 Wash. at 635; *but see Taylor v. Sch. Dist. 7 of Clallam Cnty.*, 16 Wash. 365, 366-67, 47 P. 758 (1897) (finding rule against contractually binding successors inapplicable because members of a school board served staggered terms, making it a continuous body).

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We have also looked to the case law of other states in our effort to define how far a board may go in constraining the policy choices of future boards. In *Kirby Lake Development, Ltd. v. Clear Lake City Water Authority*, 320 S.W.3d 829 (Tex. 2010), developers sued a water control and improvement district over possession of certain water and sewer facilities. One of several theories argued was that the defendant water authority had made contractual commitments which would bind future boards. The Texas Supreme Court rejected this argument as not supported by the facts, but did provide some quotes from earlier cases which shed some light on the principle under examination. The court noted that certain government powers are conferred “for public purposes, and can neither be delegated nor bartered away.” *Kirby Lake*, 320 S.W.2d at 843 (quoting *State ex rel. City of Jasper v. Gulf States Utils. Co.*, 144 Tex. 184, 194, 189 S.W.2d 693 (1945)). The court quoted an even earlier Texas case as follows:

[Municipal] corporations may make authorized contracts, but they have no power, as a party, to make contracts or pass bylaws which shall cede away, control or embarrass their legislative or governmental powers, or which shall disable them from performing their public duties.

*Kirby Lake*, 320 S.W.2d at 843 (alteration in original) (quoting *Brenham v. Brenham Water Co.*, 67 Tex. 542, 554, 4 S.W. 143 (1887)).

These cases support the notion, implicit but not discussed in the Washington case law, that there is a “core” of public governmental power that cannot be bargained away or compromised by current officeholders to the detriment of their successors in office. *Kirby Lake*, 320 S.W.2d at 843; *see also Inverness Mobile Home Cmty., Ltd. v. Bedford Twp.*, 263 Mich. App. 241, 687 N.W.2d 869 (2004) (Michigan Court of Appeals held that a township could not enter into a consent judgment committing a future township board to amend the township’s master plan to permit a manufactured housing development); *Cnty. Mobilehome Positive Action Comm., Inc. v. Cnty. of San Diego*, 62 Cal. App. 4th 727, 73 Cal. Rptr. 2d 409 (1998) (California Court of Appeal found that a county lacked authority to offer a lease committing future county boards not to enact rent control legislation for a period of 15 years).

Finally, we note *Plant Food Co. v. City of Charlotte*, 214 N.C. 518, 199 S.E. 712 (1938), in which the North Carolina Supreme Court found that a city had authority to enter into a ten-year contract to deliver city sewerage sludge to a company that had agreed to dispose of it, notwithstanding that such a commitment to a limited extent compromised the power of future city officers to dispose of sludge in a different manner. The *Plant Food Co.* decision distinguishes, again, between “governmental discretionary powers” which cannot be compromised or suspended (such as “the power to make ordinances and decide upon public questions of a purely governmental character”) and the right of a municipality to make contracts in the course of administering its proprietary functions. See discussion *Plant Food Co.*, 199 S.E.

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at 713-14 [1]. The clear implication of the decision was that a contract to dispose of sludge was an administrative act, not a legislative one.

It therefore is reasonable to conclude that a distinction may be drawn between the “core legislative” powers of a legislative body and those powers which are more properly described as “administrative” or “proprietary.” The hallmark of the first category is the authority of a legislative body to exercise continuing discretion in the setting of legal standards to govern behavior within the jurisdiction. If a contract impairs this “core” legislative discretion, eliminating or substantially reducing the discretion future bodies might exercise, the courts are likely to find that the contract has improperly impaired the legislative authority of future commissioners. By contrast, counties have, and greatly need, authority to enter into contracts and make administrative decisions concerning the management of public property and the day-to-day conduct of government business. A contract that facilitates public administration, and which places no significant constraint on future policy-making is likely to be upheld.

**2. Would a series of agreements enclosed in your request, previously executed by the Spokane County board of commissioners, impermissibly bind future members of the board who might wish to change the policy choices represented by the agreements?**

Your second question asks us to apply the principle discussed above to specific agreements enclosed with your request. The opinions process is designed to provide legal guidance with respect to issues of law, but an answer to your second question would include an evaluation of factual circumstances in addition to the legal principles discussed in response to your first question. We do not know to what extent the parties have performed the obligations set forth in the agreements, whether there are any current disputes about performance, or whether other relevant facts or developments might affect the agreements and our legal analysis. For this reason, we respectfully decline to address your second question.

**3. Could a county commissioner be held liable for tortious interference with a contract if the commissioner exercises his/her legislative functions in a manner inconsistent with contractual agreements previously entered by the board of commissioners?**

Your final question asks about the possibility of liability for tortious interference with a contract. The elements of this tort are set forth in a recent case as follows:

A defendant is liable for tortious interference with a contractual or business expectancy when (1) there exists a valid contractual relationship or business expectancy, (2) the defendant had knowledge of the same, (3) the defendant’s intentional interference induced or caused a breach or termination of

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the relationship or expectancy, (4) the defendant’s interference was for an improper purpose or by improper means, and (5) the plaintiff suffered damage as a result.

