

August 29, 2021

Submitted via email: [comment@CapitolLakeDeschutesEstuaryEIS.org](mailto:comment@CapitolLakeDeschutesEstuaryEIS.org)

Department of Enterprise Services  
Capitol Lake – Deschutes Estuary EIS  
PO Box 41476  
Olympia, WA 98504-1476

Attn: Carrie Martin, Project Manager

Re: Port of Olympia Comments on the Capitol Lake – Deschutes Estuary Long-Term Management Project Draft Environmental Impact Statement (DEIS)

Dear Ms. Martin,

On behalf of the Port of Olympia (Port), we are submitting comments in response to the Washington State Department of Enterprise Services (DES) Capitol Lake – Deschutes Estuary Long-Term Management Project Draft Environmental Impact Statement (DEIS) issued on June 30, 2021, as part of a State Environmental Policy Act (SEPA) Project review. We are appreciative of the opportunity to provide our comments for consideration in identifying and implementing an environmentally and economically sustainable long-term management alternative for this important community resource. Improving water quality, managing existing sediment accumulation and future deposition, improving impaired ecological functions and restoring and enhancing community use of the resource are important and potentially perceived as being divergent goals. Balancing these goals in the context of a diversity of deeply held perspectives and beliefs around Capitol Lake and the Deschutes Estuary is a significant and complex community challenge, and DES is to be commended for their on-going efforts toward achieving that balance.

The Port is grateful to have participated on several of the Work Groups developed to provide input and support during the development of this DEIS. Representatives of both the elected Port Commission and Port staff attended the Executive, Technical and Funding and Governance Work Groups, and look forward to continued participation through development of a Final Environmental Impact Statement (FEIS) and selection of a Preferred Alternative. We are committed to continuing our partnership with DES and various community stakeholder groups to create innovative solutions for an economically and environmentally sustainable Capitol Lake – Deschutes Estuary Long-Term Management Plan. Ultimately, this plan must seek to conserve and restore this important community, historic, visual and recreational resource while recognizing sovereign treaty rights and tribal interests. The amount of work and commitment to addressing this complex community issue captured in the DEIS is inspiring and the Port would like to extend our appreciation to all who have participated.

Thank you for extending the comment period, there is a significant volume of material to review and comment on, and the extra time was helpful. The quality of the discipline reports appears to be very comprehensive and thorough, and the information is well organized and presented. The Port has limited our review and comments primarily to those topics that would have the greatest impact on the Port's mission, operations, and assets.

The DEIS states that DES has not yet selected a preferred alternative. Information received during the public comment period will be used, in part, to identify additional analyses that may be needed to modify alternatives to better meet the project purpose and goals and to supplement the initial prioritization of the weighting for the preferred alternative selection criteria. In support of this iterative evaluation process, and as requested in the DEIS, the focus of the Port's comments outlined below is on providing information to DES to help improve the environmental analysis, to address the methodology used in the analysis, and to request additional information and evaluation of additional and/or increased mitigation measures related to various aspects of the alternatives. The Port is not, through this comment letter, taking a position on a Preferred Alternative at this time.

The Port appreciates all of the work – both policy level and technical – represented in the DEIS. Still, we are concerned the current investigation, analyses and vetting of certain basic assumptions and foundational issues are incomplete. This significantly impacts the evaluation of all three alternatives, particularly from a regulatory, cost, economic impact and project feasibility standpoint. Specifically, there are assumptions made in the DEIS that are inconsistent with our understanding of Federal navigation and asset stewardship, as well as Federal permitting processes. Additionally, we believe more detailed investigation, analyses and refinement of assumptions needs to occur related to sediment management and disposal, community recreation uses, and implementation strategies – including funding commitments – for some of the mitigation measures. Without greater clarity around these important issues, it is difficult to ensure the purposes of preparing an EIS pursuant to SEPA (WAC 197-11-400) to assist in DES's consideration and decision making process related to this complex and significant community project action are met.

Without additional investigation, robust analyses, and discussion of mitigation measures, including how and when mitigation is implemented and by whom, the Port believes it is difficult to thoroughly and objectively assess the alternatives against the stated Project Goals and to apply the prioritized selection criteria accurately. For example, one of our concerns related to federal permitting feasibility tests the basic assumption/statement on Page 1-19, *"...all three action alternatives are feasible from a technical and regulatory perspective (i.e., they have been screened for potential limitations that would make them impossible to permit, construct, or manage)..."*. The Port's specific concerns, requests for additional analysis and suggested remedies are outlined more thoroughly, below.

### **Navigation and Maintenance Dredging**

Budd Inlet is the southernmost extension of Puget Sound, and the Port of Olympia has operated a marine terminal since the 1920's, which currently provides ready access to local, regional and international markets. As authorized by Federal legislation, the United States Army Corps of Engineers (USACE) maintains a navigation channel into Budd Inlet that splits to serve East Bay and West Bay, as well as maintaining a turning basin for large ships accessing the marine terminal within West Bay. The role of USACE, *"...with respect to navigation is to provide safe, reliable and efficient waterborne transportation systems (channels, harbors, and waterways) for movement of commerce, national security needs, and recreation."* (USACE Engineering Regulation 1105-100). In support of this purpose, USACE maintains these Federal assets through a variety of actions, including dredging to maintain serviceable and reliable depths and widths, as well as removing navigation hazards and underwater obstructions<sup>1</sup>.

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<sup>1</sup> <https://www.nws.usace.army.mil/Missions/Civil-Works/Navigation/>

Because of its' role and stated purpose, USACE is an important and integral partner and agency with jurisdiction and regulatory authority within the project area. While the Port does not presume to speak on behalf of USACE, it is our understanding from communications with USACE staff that, aside from various requests for information from DES consultants/sub-consultants preparing the DEIS, there has been insufficient substantive conversations with USACE, as an integral stakeholder and regulator, to fully vet many of the assumptions that have been made in the DEIS related to both navigation (dredging) and regulatory (permitting) components that significantly affect the analysis – and basic feasibility of – the alternatives. For example, Attachment 6 Navigation Discipline Report, makes an assumption that maintenance dredging in the West Bay navigation channel and turning basin (and other areas) will occur, “...within the next 10 years, prior to, or at implementation of, any of the proposed action alternatives.” (page 3-3). While this may be aspirational and a shared goal of the Port and USACE, it is by no means an assumption that can be made with any degree of certainty.

As briefly mentioned in the Navigation Discipline Report, efforts related to maintenance dredging have most recently, “...been delayed due to the chemical quality of the sediment which would require the sediment to be disposed of at a permitted upland facility.” (page 4-10). Environmental contamination in the sediments of West Bay remain a significant and complex challenge for USACE, the Port, and the Washington State Department of Ecology (Ecology). Unresolved issues remain related to dredge disposal issues and the complex interplay of federal and state authorities and requirements. While all partners are working collaboratively to develop innovative approaches allowing the diversity of issues to be equitably resolved, there are no guarantees they will be resolved in a timeframe allowing for the extensive analyses, permit reviews (both State and Federal) and allocation/securing of funding necessary to accomplish the maintenance dredging and associated dredge disposal within a 10-year timeline. As such, the basic foundation for much of the DEIS analyses is based not on an existing condition, but rather on an assumed future condition with little concurrence as to scope or an implementation timeframe.

Additionally, the proposed mitigation measures of the development of both a sediment monitoring plan and a maintenance dredging program are undefined. It is unclear which party(ies) would be responsible for either program or to bear the costs.

The Port believes the assumptions, investigations and analyses related to maintenance dredging to occur in West Bay, including the navigation channels and turning basin, needs to be more fully vetted, with USACE engaged as a collaborative partner with jurisdiction and regulatory authority. Alternatively, if either the Estuary or Hybrid option are selected as the Preferred Alternative, maintenance dredging within West Bay, including to the full authorized depths in the Federal navigational channel and turning basin, should be considered a component of construction to be accomplished prior to/commensurate with implementation of all other physical elements of these two alternatives. Furthermore, the costs of performing this maintenance dredge should be more thoroughly investigated, analyzed and included in the alternatives analysis, and a specific funding strategy, along with commitments to provide resources from identified funding partners, needs to be described.

Chapter 7 correctly identifies that the Federal navigation channel is currently impacted by sediment accumulation and needs to be dredged, which is further complicated by the presence of environmental contaminants. However, the Port strongly disagrees with the statement on page 7-12, “If this dredging does not occur, and if the Estuary or Hybrid Alternative is selected as the Preferred Alternative and is implemented, then additional sediment deposition from the project is not expected to significantly impact the Port of Olympia because navigation is already impaired.” The obligation to address impacts

created by a project action is not negated by the existence of existing adverse conditions. Taking the position that a significant impact will not result where an already adverse condition exists is untenable, particularly as part of a SEPA review for a specific project action.

The DEIS directly contradicts this conclusion in several places, including in Attachment 6: Navigation Discipline Report and in the following statement regarding the Estuary and Hybrid Alternatives in the Executive Summary at Table ES.2 Summary of Key Findings – Long-Term Impacts, Benefits, and Proposed Mitigation:

*“Navigational impacts from sediment deposition would be **significant** but could be reduced to less than significant if consistent funding is available for the long-term dredging program (with dredging estimated at a 6-year frequency), and with implementation of an annual sediment monitoring program to ensure that maintenance dredging is responsive to actual sediment deposition that is highly influenced by environmental conditions.*

**Proposed Mitigation**

- *Implementation of a sediment monitoring plan. Monitoring would be conducted regularly and used to modify the long-term dredging plan, as necessary.*
- *As part of the maintenance dredging program, scheduling and phasing would be developed in coordination with the USACE, the Olympia Yacht Club, other private marinas, and the Port of Olympia.”*

**Federal Permitting**

Chapter 9 of the DEIS provides a comprehensive listing of the various permits required by Federal, State and Local government agencies, and acknowledges the process of obtaining permits and approvals will be complex and time consuming for all alternatives. There also appears to be additional information provided in the various discipline reports describing some permits in more detail, as they may be pertinent to the specific discussion in those reports. However, a comprehensive regulatory assessment of each alternative has not been provided in the DEIS to demonstrate that the alternatives, as envisioned, are consistent with the various applicable regulations. Without this assessment, it is difficult to evaluate the probability of securing the various permits, particularly from the Federal agencies that haven't been proactively involved in the development of the DEIS. For example, USACE is required to conduct a Section 408 review on any project with the potential to alter or impact a Federal civil works project, which includes the navigation channel and turning basin in West Bay. If some component of the DEIS alternatives is determined by USACE to negatively impair the function of the navigation channel or turning basin, significant changes would have to be made to that project before it could be authorized to proceed.

The Port is requesting additional investigation and collaboration with all Federal, State and Local Government permitting agencies, including USACE, to complete a regulatory assessment of the various alternatives prior to selecting the Preferred Alternative, to better understand the feasibility of implementation. As mentioned earlier in this letter, without an additional regulatory assessment, we do not believe the statement, *“...all three action alternatives are feasible from a technical and regulatory perspective (i.e., they have been screened for potential limitations that would make them impossible to permit, construct, or manage.)”* is demonstrated.

## **Sediment Management**

Sediment management is identified in Chapter 7 as the project component with the greatest influence on planning-level construction cost estimates, across the alternatives. As such, the Port is requesting additional, specific analysis of all sediment management assumptions – including those identified on page 7-6 - to ensure consistent application of those assumptions and to bring greater understanding and transparency to this significant cost component. Specifically, we are interested in more clarity related to the different dredge disposal assumptions (for both construction and maintenance dredge activities), including detailed and substantive discussions with the State and Federal agencies regulating and permitting dredge disposal. For example, we are concerned the assumptions related to dredge material contamination and invasive aquatic species have not been fully analyzed and consistently applied to the alternatives analysis. It is vitally important to ensure that these assumptions are complete and defensible, not only from an environmental remediation and clean up perspective, but also from an economic one. The cost variant between upland and in-water dredge disposal methods is significant, and assumptions as to which disposal methods will be required for the various alternatives needs to be consistently evaluated and applied.

The Port is requesting each of the alternatives be evaluated based on cost estimates considerate of both upland and in-water disposal of dredge materials. Without this additional cost analysis, there is no real way to make an objective cost comparison.

SEPA requires that, in part, an EIS process, “...shall provide an impartial discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives, including mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality.” The Port believes it is difficult to demonstrate “impartial discussion” where assumptions may be inaccurate, not fully informed/understood and not consistently applied. If the cost analysis assumes a lowest cost scenario for the dredge disposal method in one or more alternatives, and also assumes the highest cost scenario for the dredge disposal method in another alternative, the analysis can appear weighted in favor of one or more alternatives. For example, Chapter 7 states in-water disposal of maintenance dredge materials – the lowest cost scenario - is assumed for the Estuary and Hybrid options. It goes on to indicate if upland disposal is required for maintenance dredging in the Estuary and Hybrid alternatives, the costs for disposal would more than double – the highest cost scenario. Conversely, it assumes upland dredge disposal transported by truck – the highest cost scenario – for the Managed Lake maintenance dredging will occur, while also acknowledging transport of the dredge material by rail – a less expensive scenario – could occur. The Port believes that the cost analysis, as currently presented, does not meet the standard of impartiality.

## **Mitigation Implementation**

The Port has appreciated being asked to participate on the Funding and Governance Work Group throughout the development of the DEIS, and agrees that an Interlocal Agreement governance model is well-suited for governance of on-going long-term management of this important community asset. We are also requesting that further investigation, analysis and collaboration among the potential participants in this governance model occur before a Preferred Alternative is selected.

Development of the Interlocal Agreement should proceed to full execution by all parties to the agreement, demonstrating on-going commitment to long-term management and funding is in place and the viability of the alternatives that require this governance structure is ensured, prior to selecting those alternatives for implementation. As stated in the DEIS, “Further delay in decision-making is not

*acceptable to the range of engaged stakeholders.”* (page 1-18); without an established, demonstrable commitment from the parties that may be charged with long-term management and funding, the Port is concerned the feasibility of the alternatives reliant on entities other than the State of Washington may be in jeopardy.

### **Recreation Access**

The Port is concerned the DEIS appears to favor certain types of water dependent recreation over others. Swimming has been an activity that has been enjoyed in the past at Capitol Lake. It is an activity that is widely accessible to people, regardless of income level. Currently, the DEIS indicates swimming isn't a responsibility of DES, so it isn't addressed. Kayaking is also an important activity that can occur regardless of the alternative selected, however, it isn't accessible to people of all incomes. It also doesn't come under the purview of DES, but it is identified as an activity to be accommodated. Impacts that limit swimming, and potential mitigation measures to address those impacts, should be identified and evaluated.

### **Conclusion**

In conclusion, the Port of Olympia requests the additional investigations, analyses and collaborative discussions with regulatory agencies, particularly USACE, outlined in our comments above be completed prior to selection of a Preferred Alternative. We are committed to helping complete these requested additional tasks as may be appropriate, and to working with our community partners to resolve this complex community challenge and establish, finally, an actionable path forward toward a Capitol Lake-Deschutes Estuary Long-Term Management Plan.

Sincerely,

Joe Downing, President  
Port of Olympia Board of Commissioners