



State of Oregon
Department of
Environmental
Quality

Beneficial Use of Solid Waste Determination Evaluation Form

Applicant: Port of Portland

BUD-20120320: Solid Waste: dredged sediment

Summary of Proposed Beneficial Use:

The Port is planning to dredge from 10,000 to 40,000 cubic yards of sandy, clayey silt from the Willamette River at Port of Portland's Marine Terminal 2, Berths 205 and 206. Actual volumes will be determined by pre-dredge bathymetric surveys. The Port will use this sediment as fill material for future marine commercial and industrial development at the established West Hayden Island Placement site.

Reviewer: Tim Spencer

Date: May 10, 2012

Tier: ☐ One ☒ Two ☐ Three

Beneficial Use of Solid Waste

Beneficial use of solid waste is a sustainability practice that may involve using an industrial waste in a manufacturing process to make another product or using a waste as a substitute for construction materials.

The environmental benefits of substituting industrial waste materials for virgin materials includes conserving energy, reducing the need to extract natural resources and reducing demand for disposal facilities.

Oregon Administrative Rules (OAR) 340-093-0260 to 0290 establish standing beneficial uses and a process for DEQ review of case-specific beneficial use proposals. Under these rules, DEQ may issue a beneficial use determination as an alternative to a disposal permit for proposals that meet the rule criteria. Once a beneficial use determination is issued, DEQ no longer regulates the waste as a solid waste, as long as the material is used in accordance with the approved beneficial use determination.

Beneficial Use Determination Evaluation Summary

- ☒ Yes, the Beneficial Use of this solid waste meets all the case-specific performance criteria listed below and is approved.
- ☐ No, the Beneficial Use of this solid waste does not meet all the case-specific performance criteria listed below and is not approved.

Notes: The Port of Portland submitted information necessary for DEQ to make a determination. DEQ evaluated this information against acceptable risk criteria, and surface and ground water interactions.

Case-Specific Beneficial Use Performance Criteria:

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Determination Evaluation Form**

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Solid Waste: T2 dredged sediments
Date: May 10, 2012
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DEQ may approve an application for a case-specific beneficial use of solid waste only if all the following performance criteria are addressed: 1) Characterization of the solid waste; 2) Productive beneficial use of the solid waste; and, 3) The affect of the proposed beneficial use on public health, safety, and welfare or on the environment.

1) Characterization of the Solid Waste

Did the applicant characterize the solid waste and proposed beneficial use sufficiently to demonstrate compliance with the rules for case-specific beneficial use determinations (OAR 340-093-0280) by submitting required information for the appropriate tier? (See tier sections below for detailed characterization information.)

☒ Yes ☐ No

Notes: The Port of Portland provided the necessary description of the material and how it is proposed to be used.

Was the following information submitted for DEQ review and how adequate was it?

Tier 1 ☒ Applicable ☐ Not applicable

- Did the applicant provide an adequate description of the material proposed for beneficial use, the manner of generation and the estimated quantity to be used beneficially each year?
☒ Yes ☐ No

Notes: The material is fine-grained sediment (mix of sandy, clayey silt) from Terminal 2 (T2) berths 205 and 206 in the Willamette River. The sediments will be generated by maintenance dredging. The quantity will be approximately 10,000 to 40,000 cubic yards. Dredging will occur in accordance with existing U.S. Army Corps of Engineers permit Nos. NWP-2007-204

- Did the applicant provide an adequate description of the proposed beneficial use and justify how the proposed use is beneficial?
☒ Yes ☐ No

Notes: The Port of Portland proposes to use the sediments as fill material to increase site grade prior to future development at West Hayden Island (see section 2 notes below).

- Did the applicant provide a sufficient comparison of the chemical and physical characteristics of the material proposed for beneficial use with the material it will replace?
☒ Yes ☐ No

Notes: Dredge sediments have similar characteristics to soil fill. In DEQ's experience, dredged sediments are commonly used as fill material.

- Did the applicant successfully demonstrate compliance of the proposed beneficial use with the performance criteria in OAR 340-093-0280 based on knowledge of the process that generated the material, properties of the finished product, or testing?
☒ Yes ☐ No

Notes: See notes 2) and 3) below.

Tribal Interests, Treaties

13. Assertion of the Tribes that treaty rights come into play either with respect to fish issues or with respect to treatment of the island itself..

Answer:

While one or more tribes have expressed concern about the effect that developing a port facility may have on their fishing rights, staff is not aware of any treaty violation related to this project and no specific treaty violation has been asserted.

There are a variety of treaties with Pacific Northwest Sovereign Nations/Tribes. Some tribes have treaty rights to fish in the Columbia River. Other tribes have retained rights to hunt and gather, or perform traditional ceremony in traditional locations. The Yakama have reserved rights under the Treaty of 1855 to fish at all usual and accustomed places known at the time of the treaty signing. This includes both on - and off-reservation sites. The Grande Ronde includes descendants of the original people of the Portland area, and they were the tribe that ceded the land that makes up Portland to the United States. Because the Columbia River was such a significant trade corridor, other tribes also have treaty interest in lands along it. In the case of WHI, our primary treaty-related concern is that Port development would impact fisheries in the Columbia River.

Staff's approach to respecting and honoring these treaty rights includes: 1) conducting detailed natural resource evaluations (the HNRI and ESEE), and inviting tribal review of that work; 2) designing the site to be as salmon-friendly as possible - in this case avoiding shallow water impacts (a key habitat for salmon) and fully mitigating forest impacts; 3) staying in close communication with interested tribes at each stage of our work; and 4) coordinating information and actions related to state archeological resource protections.

Fisheries Impacts

The Columbia River is designated *Critical Habitat* for 13 Endangered Species Act (ESA) - listed salmonid populations because it is *the* migration route to and from the ocean. Pacific salmon, especially juveniles, are one of the more sensitive aquatic species to water quality and quantity, and physically diverse and complex habitats. The lower Columbia River is also designated critical habitat for Pacific eulachon. Pacific lamprey, which are not yet listed, also use the Columbia River to migrate between freshwater spawning beds and the ocean.

Shallow water habitat (SWH) is a primary limiting factor for salmon and eulachon species. SWH in the Lower Columbia River estuary¹ provides important functions such as velocity moderation and food production that support aquatic organisms. For juvenile salmonids migrating out of the Columbia River system, shallow water habitat is where they begin to experience tidal action. These fish can have extended rearing (resting and eating) periods in the lower river prior to outmigration. SWH also builds and maintains

¹ The Columbia River estuary is the lower 145 miles of the river from the Bonneville dam to the Pacific Ocean.

the aquatic food web for other fish such as lamprey and sturgeon, amphibians, birds and mammals.

West Hayden Island is surrounded on all sides by SWH. The highest quality shallow water habitat on West Hayden Island predominantly occurs on the south shore of the island where forest land is contiguous to the in-water areas and there is evidence of large woody debris accumulation. Maintaining the continuity of shoreline habitats is important, fragmentation of the shoreline area can disrupt migratory behaviors of fish. Chinook salmon, coho salmon, steelhead trout and Pacific eulachon are highly reliant on shallow water habitats; slower water is especially important during high flows, which can negatively affect small or stressed fish.

More information about SWH and ESA species can be found in the Environmental Foundation Report (ENTRIX, 2010), the Concept Plan report (Worley Parsons, 2012), and the Hayden island Natural Resources Inventory (BPS, 2012). In particular:

- Hayden Island NRI (aka HNRI), pg 91-97
- Environmental Foundation Study (ENTRIX), pg ES-15 and pg 3
- Concept Plan Final Report (WorleyParsons), pg 14 and memo dated 11-10-11

The Concept Plan looked at two basic layouts:

A Series: Avoided the wetlands and SWH along the south bank of the island by keeping all development north of the PGE easement

B Series: Impacted some of the wetlands and SWH along the south bank, but avoided the large forest patch just west of the DDMA

Both the A and B Series proposed that development be set back 100ft from the Ordinary High Water Mark on the north shore. This was to avoid impacts to shallow water habitat to the maximum extent possible.

The Advisory Committee (AC) preferred the A Series of site layouts for preserving on-site, shallow water habitat for the benefit of salmon. The only direct impacts to shallow water habitat in the *Final Base Concept Plan* are the access ramps to the docks; the docks themselves are to be located out past the lower extent of SWH. In total, there are less than 2 acres of direct impact from the dock infrastructure. The AC also chose the version of the A Series that pushed the rail loop as far east as possible to minimize impacts to the intact cottonwood/ash forest.

14. If this annexation and development were passed by City Council - what is the impact on relationships with Tribes - especially those who have Federal Treaty rights on the Columbia and Willamette?

Answer: Our City Attorney's office continues to research federal tribal treaty rights and their relationship to this potential annexation and development. The passage of Resolution 36941 is one way that the City is moving forward to formalize government-to-government relationships with Tribal Government Partners. The City of Portland is currently working to establish Tribal Government Consultation protocols called for in the

resolution. The potential annexation of WHI presents an opportunity to begin to define what these protocols might look like. As separate sovereign nations we will need to defer to Tribal Governments individually regarding their expectations for consultation for this project and other important projects in the City.

15. How does the city propose to close the gap between tribal testimony and the proposed annexation and development of WHI? Has there been staff outreach post hearings and are there plans for addressing tribal concerns?

Answer: Since the PSC hearings staff has continued to communicate with tribal representatives, working with the City's Government Relations Office. We have also worked with the City Attorney's Office to consider questions related to treaty interests. Some of that research is ongoing, and our answers may evolve as we learn more.

Regarding tribal and indigenous outreach, there have been several distinct efforts, at different levels.

- In July 2012 City Council passed Resolution 36941, which aimed to establish more formal consultation agreements between the City and Tribal Government partners. This resolution is particularly focused on higher level (City Council and Tribal leadership level) dialog and relationship building. Although the WHI project pre-dates this resolution, there has been communication at this level - for example WHI project staff has participated in talks between then Mayor Adams and Grand Ronde leadership, where the project was discussed. Staff is working with Council staff to provide a more detailed briefing on this Resolution during the 29th work session.
- Many of the Tribes have natural resource offices and technical staff. BPS staff has continued to work with those staff to collect technical input on the natural resource reports and proposed mitigation framework. Tribal Government staff has offered technical feedback over the course of this project, and will be in attendance on the 29th. Staff recommends the Commission invite their comments. Specifically, we have also been informed that Yakama Nation Fisheries (YNF) management has authorized continued involvement and oversight of the WHI annexation issue. Grande Ronde has also indicated that they would like to continue staff to staff periodic meetings and updates on the project.
- Staff has contacted the Columbia River Inter-Tribal Fish Commission (CRITFC) to determine how CRITFC would like to be involved in the project moving forward. BPS has been informed that CRITFC will continue to monitor this project and would like to receive regular updates.
- Staff also understands that there is a large indigenous or Native American population in Portland, who may or may not be affiliated with recognized tribes. BPS maintains a relationship with the Native American Youth Family Center (NAYA), as a component of our larger outreach work on all planning issues. Project staff have discussed WHI with NAYA staff on several occasions, and NAYA has been involved with BPS staff education and training on Native American concerns.

Given the level of tribal government interest, staff recommends consideration of more specific coordination mechanisms in the proposed IGA, to ensure ongoing consultation as the project progresses, after annexation.

16 Can the IGA contain a mechanism that provides tribal feedback (design, mitigation, continued communication through development and management)?

Answer: Yes, BPS recommends consideration of more specific coordination mechanisms in the proposed IGA, to ensure ongoing consultation as the project progresses, after annexation. Some of the areas of the agreement we are looking at include the open space strategy, natural resources coordination and ongoing WHI advisory committee.

17. Describe the tribes role in process - how did we involve them?

In early 2010 (prior to the City Council's resolution) staff worked with the City's Government Relations Office to discuss sovereign nation involvement in the WHI project and to determine the list of sovereign nations in the area that may have an interest in the WHI planning process. We contacted the following tribal representatives by e-mail in the spring of 2010 and again in the fall of 2010 to discuss involvement in the WHI project:

Erin Madden, Nez Perce Tribe
Mike Karnosh, Grand Ronde Ceded Lands Coordinator
Tom Downey, Siletz Tribes
Brian Cunningham, Warm Springs Tribes
Matt Johnson, Umatilla Tribes
Rose Longoria, Yakama Nation

We provided background on the project and asked how they would like to participate. This included:

- Periodic check-ins via phone or email;
- Quarterly meetings to discuss the project;
- Identifying experts to participate in technical review of reports; or
- Discussions with the project advisory committee.

Grande Ronde, Warm Springs, Nez Perce and Yakama requested periodic phone check ins and updates by e-mail. BPS has provided quarterly check ins or at key project milestones to provide updates. Since Council's resolution in July 2010 we have also had additional involvement by Grande Ronde and Yakama as part of a technical review team to review our Hayden Island Natural Resources Inventory and ESEE Analysis. In March 2011, BPS staff and management participated in a meeting with Grande Ronde staff in Grande Ronde to discuss more details on the WHI and River Plan projects.

Grande Ronde, Nez Perce and Yakama requested notification of technical work sessions to review consultant and staff reports. Staff provided e-mail updates on a quarterly basis, or as key studies were completed, with notification of technical works sessions of interest. Over the past year and half Yakama has become more involved in attending WHI Advisory Committee meetings. Grande Ronde has requested phone check ins and staff to staff meetings to receive updates on the concept plan, land management options report and natural resources mitigation.

10/25/13

I have requested to speak to the
Mayors panel, December 4 9:30 am
2013. The abundance of wildLife that
inhabits WHI, The illegal hunting
Below high tide, The 36941 resolution.
Respectfully Submitted.

David Douglas Redthunder

AUDITOR 10/28/13 AM 10:22

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25 OCT 2013 PM 1 L



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1145

Request of David Red Thunder to address Council regarding West Hayden Island
(Communication)

DEC 04 2013

PLACED ON FILE

Filed NOV 26 2013

LaVonne Griffin-Valade
Auditor of the City of Portland

By *Susan Parsons*

COMMISSIONERS VOTED AS FOLLOWS:		
	YEAS	NAYS
1. Fritz		
2. Fish		
3. Saltzman		
4. Novick		
Hales		