



BENEFICIAL USE OF SOLID WASTE RESPONSE TO PUBLIC COMMENTS

To: Wendy Wiles, Administrator
Land Quality Division

Date: May 5, 2011

From: Tom Roick, Senior Policy Analyst, Land Quality Division
Audrey O'Brien, Manager, Northwest Region Solid Waste

Subject: Beneficial Use Determination
Port of Portland, Post Office Bar dredge material placement at West Hayden Island
BUD20100708 (Reconsidered)

INTRODUCTION

The Oregon Department of Environmental Quality's Solid Waste program promotes the prevention, recovery and proper management of solid waste. DEQ's regulatory actions are not intended to influence land use decisions by local government.

In April 2010, the Environmental Quality Commission adopted rules establishing new procedures for DEQ to approve the beneficial use of solid waste. Beneficial use may involve using an industrial waste in a manufacturing process to make another product or using waste as a substitute for construction materials. Beneficial use of solid waste is a more sustainable alternative to disposal that conserves energy, reduces the need to extract natural resources and reduces demand for disposal facilities.

On July 1, 2010, DEQ received a Tier 2 beneficial use application from the Port of Portland to beneficially use sediments from a U.S. Army Corps of Engineers dredging project at Post Office Bar in the Willamette River. In order to maintain safe navigation, the U.S. Army Corps of Engineers proposed to dredge approximately 75,000 cubic yards of material from the Post Office Bar. On July 8, 2010 DEQ issued a beneficial use determination to the Port of Portland that allows the Port of Portland to place the dredged sediments at a designated location known as the West Hayden Island Placement Facility. In making its determination, DEQ reviewed analytical data for the sediments to ensure contaminant concentrations are below levels of concern for people and animals based on current and proposed future uses of the site.

PUBLIC INVOLVEMENT

On August 30, 2010, DEQ held a hearing on the Post Office Bar dredging 401 Water Quality Certification. To respond to input from the West Hayden Island community about the beneficial use determination, DEQ met with residents on September 16, 2010 and March 3, 2011 to provide information and answer questions. DEQ also organized an informational question and answer meeting with other federal and local agencies that was open to the public at the Jantzen Beach Super Center on March 29, 2011. Both meetings started at approximately 6:30 pm and ended at approximately 8:30 pm.

To provide a formal opportunity for public comment on the beneficial use determination, DEQ opened a comment period beginning March 16, 2011 and held a public hearing on April 12, 2011 at the Jantzen Beach Super Center. The meeting started at 6:30 pm and ended at approximately 8:30 pm. DEQ issued a



public notice advertising the hearing and requesting comments. DEQ notified West Hayden Island residents by email and information posted on DEQ's website. The comment period closed at 5 p.m. on Monday, April 18, 2011. DEQ received 20 verbal comments at the public hearing and six written comments during the public comment period. DEQ has summarized and responded to the comments received below. The comments are verbal unless noted as written. The complete, transcribed verbal and written comments are posted on the web at:

<http://www.deq.state.or.us/lq/sw/disposal/beneficialusepostoffice.htm>.

RESPONSE TO COMMENTS

Comment #1:

The Port has a continued need to dispose of dredged sediments upland. The Port has used this sediment placement facility for years. The Port has proposed development of this property since acquiring the land from PGE in 1994. The Post Office Bar sediments can be placed upland with no harm. DEQ should approve the beneficial use determination request (Sebastian Degens, Port of Portland #1).

DEQ's Response:

Comment noted.

Comment #2:

Dredging is needed for safe navigation and for ongoing cargo movement. Navigation maintenance dredging is needed. A disposal site such as this one is needed for dredged materials. Take measures to minimize impacts. DEQ should approve the BUD request (Glen Vanselow, Pacific Waterways Association #2, Laurie Wall, Maritime Group #3, Walt Evans, Schwabe-Williams and Pacific Northwest International Trade Association#5). Don't lose sight of the need for safe navigation. The river needs to be 600 feet wide for ships and currently is 450 feet wide (Paul Amos, Columbia River pilots #17; Jim Townley, Columbia River Steamship Operators Association, April 18, 2011, written comment). The Working Waterfront Coalition (WWC) is on record supporting the maintenance dredging of Post Office Bar and placement of the dredge materials at the previously approved dredge disposal site on West Hayden Island. We are writing again to reaffirm our support for this project and to encourage the DEQ to continue its support for this economical and suitable placement site. The area in the vicinity of Post Office Bar at river mile 2.1 – 2.4 is an area of severe shoaling and creates safety and efficiency issues for ocean going vessels that move through this area each day. This is a serious and deteriorating situation that should be addressed immediately. Disposal sites, such as this, are essential to keeping our trade routes safe and efficient (Ann Gardner, Working Waterfront Coalition, April 18, 2011 written comment; Jim Townley, Columbia River Steamship Operators Association, April 18, 2011, written comment). In order maintain safe navigation and to help our Port compete more effectively overseas, I respectfully urge DEQ to approve the Port's beneficial use permit allowing the Corps of Engineers to dredge approximately 75,000 cubic yards of material from an area in the Willamette River known as Post Office Bar and to deliver dredged materials to the designated location known as the West Hayden Island Placement Facility (Walt Evans, April 15, 2011, written comment).

DEQ's Response:

Comment noted.

Comment #3:

The Port's proposed development at West Hayden Island will bring commerce to West Hayden Island. The area is seeking global markets and a good navigation system is needed to do that. While the Portland metro area cannot do anything about international trade and tax policies, we can do something locally by increasing jobs tied to trade and maximizing our export port. A dredging site is important. DEQ should approve the BUD request (Laurie Wall and Walt Evans).

DEQ's Response:

Comment noted.

Comment #4:

There are bald eagles 200 yards from the sediment disposal facility. There are numerous wildlife that use the island. Zinc may be in the materials currently in and around the sediment disposal facility and may be harming the animals. We definitely need business but we also need the animals. I am here to speak for the animals. (David Red Thunder) Sediments should not be here. This area should be treated similarly to Forest Park (Karen Trusty #8).

“The wildlife usage of the grasslands on which the dredge materials would be dumped has been significantly underestimated: Environmental Assessment and Biological opinions understate vegetation and wildlife use at the site. Except during active disposal periods, the dredge deposit areas are partially covered and surrounded with native and non-native vegetation and are frequented by a wide array of birds of prey (including recently delisted bald eagles), passerines, waterfowl, shorebirds, mammals and amphibians. Recent city of Portland Wildlife Surveys at the dredge material site confirm usage of a wide array of avian wildlife species including species of concern such as western meadowlarks. In addition, a pair of bald eagles have been constructing a nest at the Northwest end of the dredge deposit area (personal observation). Finally the dredge deposit area is creating an attractive nuisance by creating a ponded area which has been drawing a large array of wildlife including passerines, shorebirds, waterfowl, amphibians and a variety of mammals (personal observation). We would encourage DEQ to reconsider the BU determination in light the updated wildlife data. Specifically we would ask DEQ to consider the following:

- a. Obtain wildlife survey data from City of Portland Bureau of Environmental Services and consult with USFWS and ODFW regarding potential impacts on species utilizing the area;**
- b. Consult with US Fish and Wildlife Service regarding bald eagles and specifically applicable protective measures that may be required under the Bald and Golden Eagle Protection Act.**
- c. Evaluate whether the uncovered placement of these materials in manner that creates ponding and allows direct exposure by wildlife and creates an attractive nuisance and unnecessary exposure that could be prevented by capping at the time of disposal” (Bob Salinger, Audubon Society, verbal comments on April 12 and written comments, April 17, 2011).**

DEQ's Response:

DEQ's evaluation assumes that there are wildlife using the property. Contaminant concentrations in the Post Office Bar sediments are below ecological screening level values described in DEQ's Guidance for Ecological Risk Assessment, December 2001 that are protective of threatened and endangered species, including bald eagles. The one exception was one sediment sample at 89 parts per million zinc, which is not significantly different than DEQ's current default background concentration of 86 pm zinc and is within the range of naturally occurring concentrations of zinc in Oregon soils.

Risk-based screening levels are inherently conservative because they are developed through research at the national level and are not area-specific. In DEQ's experience, a more detailed site-specific analysis of species exposure at West Hayden Island would most likely result in higher acceptable contaminant concentrations than those DEQ uses for screening. Because the contaminant concentrations are below screening levels that assume wildlife are using the site, DEQ does not believe there would be value in conducting a site-specific wildlife survey.

Jeremy Buck of the U.S. Fish & Wildlife Service has reviewed the Post Office Bar sediment sample data and indicated that the contaminant concentrations are below levels of concern for wildlife if the sediments are placed upland at West Hayden Island.

Comment #5:

As an independent scientist, the Port asked me to speak. These sediments are not an environmental problem. They need to be removed for navigation purposes. The risks associated with upland placement of these sediments are well below a one in a million risk. They are very small risks. The sediment will not migrate offsite. The concentrations of contaminants pass all residential screening values except for a few polynuclear aromatic hydrocarbons (PAHs). Roads have much higher concentrations of PAHs. Concentrations of chemicals in sediment have declined over time. Most sediments are cleaner than residential soils. The samples show decrease in chemical concentrations. Sediments from Post Office Bar would support future uses whether for commercial development or for wildlife (Theresa Mickelson #6).

DEQ's Response:

Comment noted.

Comment #6:

I love our island and couldn't leave it. I live in a structure that is not meant to be moved. No one will move to West Hayden Island because of the economy and proposed commercial and industrial development. It is affordable, beautiful. Many of those in the community have been here for 30 years (Carolee Collen #7, Karen Trusty #8, Herman Kachold #9, Maia Godet #10).

DEQ's Response:

Comment noted.

Comment #7:

If the toxics in the dredged material do not pose a health risk, why doesn't DEQ do an unbiased study? (Carolee Collen #7).

DEQ's Response:

The Post Office Bar sediment sampling and analysis were conducted using established procedures, quality assurance, and screening guidance. AECOM conducted the sampling and Columbia Analytical Services conducted the sample laboratory analysis. In addition to the sampling conducted by the U.S. Army Corps of Engineers for the Post Office Bar dredging project, a separate study was conducted as a joint effort by the Washington Department of Ecology, the U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service, and U.S. Environmental Protection Agency. Thirty sediment samples were collected within the upper four feet of the area that will be dredged at Post Office Bar. Jeremy Buck of the U.S. Fish & Wildlife Service has confirmed that the sample results of this separate study are very consistent with the original Post Office Bar sample results, and contaminant concentrations are below levels of concern for wildlife if placed upland at West Hayden Island.

DEQ does not believe another study would provide new information for reconsideration of the beneficial use determination.

Comment #8:

If there were an earthquake or flood, toxic materials would flood our homes. We who live on the island should not have all of the risks. Do something about the toxics already in the sediment facility from past dredging. Cap it. If there is concern about toxics, why put this sediment near people, let alone near the animals. Using this site to dump sediments from a Superfund site freaks me out (Carolee Collen #7, Karen Trusty #8, Herman Kachold #9).

DEQ's Response:

Contaminant concentrations in the sediments are below levels that are safe for people and wildlife using West Hayden Island.

The Port of Portland prepared the West Hayden Island Placement Facility by constructing a berm around the entire 102-acre site. The lowest elevation of the berm is more than 5 feet higher than the 100-year flood plain. The Post Office Bar dredge material would be placed within a cell at the back of the site, furthest from the shoreline of the Columbia River. In addition, DEQ evaluated the likelihood that flooding could result in environmental contamination. Assuming a conservative scenario that all the Post Office Bar sediment are released back into the Columbia River from a flood event, about 125 million cubic feet of water will pass by the island within an hour, and 3 billion (125,000,000 x 24 = 3,000,000,000) cubic feet within a day. Because the dredged material is fine grained, it will disperse widely during such an event and be so diluted that any identified contaminants would be below levels of concern for any aquatic life or people.

Comment #9:

Make a decision for the future of Portland. Challenge the Port to find another site (Karen Trusty #8). There are 27 other alternative sites that could be approved for dredged materials (Jimme Peters, April 13, 2011, written comment). “Alternative disposal sites do exist and we would request that DEQ and the Port of Portland utilize these opportunities and respect the public process to determine the future of West Hayden Island which is currently underway” (Bob Salinger, Audubon Society, April 17, 2011 written comment).

DEQ’s Response:

The Army Corps of Engineers and the Port of Portland are free to consider alternative disposal sites and propose alternative options to DEQ for review. DEQ is acting in response to the beneficial use application received from the Port of Portland. After reviewing the application and the comments and more recent information provided, DEQ has not identified adverse environmental impacts from placement of Post Office Bar sediments at the West Hayden Island Placement Facility.

Comment #10:

The Port should manage West Hayden Island like it does Government Island. Reclaim the island like the Port is doing with Government Island. Then the Port should lease West Hayden Island as a park (Herman Kachold, #9).

DEQ’s Response:

Comment noted.

Comment #11:

There will be adverse impacts. Even if the impacts don’t kill us, they may make us sick. The mayor is concerned about motor vehicles but supports development of the island. The island is incompatible for both wildlife habitat and development. DEQ should know better than to threaten our health. These sediments have to be toxic if the Port needs a beneficial use determination (Stewart Avina #11). The community continues to have concerns regarding potential health and safety impacts to humans: It was clear at the public hearings that the local community continues to have public health and safety concerns about the materials already placed and proposed for placement on West Hayden Island. The process to date has severely undermined community confidence in these decisions---too many aspects of this process come across as post hoc rationalizations rather than rigorous pre-decisional analysis. We believe the T-5 and Post Office Bar process call into question whether the new beneficial use determination process is adequate to protect our communities and the environment. We would encourage DEQ to engage in a full review of the BUD process to determine whether it is indeed rigorous, transparent and sufficient (Bob Salinger, Audubon Society, April 17, 2011 written comment).

DEQ’s Response:

DEQ’s initial Post Office Bar Beneficial Use Determination, issued July 8, 2010, did not identify any adverse impacts to people or wildlife from the placement of dredged sediments at the West Hayden Island

Placement Facility. In order to respond to questions and comments regarding the determination, DEQ has provided additional information both verbally and in writing regarding potential earthquake, flooding, or groundwater impacts, risk screening, and other factors. DEQ has not identified any new or conflicting information that suggests there was an error in the original determination or that there will be adverse impacts.

DEQ is working to improve the beneficial use evaluation process, public involvement and other aspects of implementing the new rules. Since the rules were adopted DEQ has posted a fact sheet, a beneficial use evaluation report form, and public involvement guidance which are posted on DEQ's beneficial use web page at <http://www.deq.state.or.us/lq/sw/disposal/beneficialuse.htm>. DEQ will continue working to improve implementation of the new rules.

Comment #12:

Because the sediments have to be capped, they must be toxic; otherwise the sediments would be dumped in water if they were not toxic (Stewart Avina #11; Tom Dana #13).

“We are concerned about the uncapped state of the contaminated T-5 materials. We have been repeatedly assured that DEQ expected these more highly contaminated materials to be covered by the PO Bar dredge materials. At the April 12, 2011 hearing diagrams appeared to indicate that in fact the PO bar Materials are being placed elsewhere and that the T-5 materials will remain exposed. The confusion between DEQ and the Port on this fundamental issue undermines public confidence that this process has in fact been carefully considered. Audubon believes that the BUD that resulted in placement of T-5 materials on WHI contains that same basic flaws as the PO Bar BUD and that those materials should be removed from WHI. The confusion over capping of these materials only heightens our concerns” (Bob Salinger, Audubon Society, April 17, 2011 written comment).

DEQ's Response:

The Post Office Bar sediments could not be placed in-water without further analysis to determine whether there could be an adverse impact from the bioaccumulation of polychlorinated biphenyls (PCBs) up the food chain from sediments to fish to people. DEQ did not require the Post Office Bar sediments to be capped at the West Hayden Island Placement Facility because the contaminant concentrations are below levels that would have an adverse impact on people or wildlife on the land.

The Terminal 5 sediments, which have already been placed at the site, have exceedances of ecological screening levels for lead and zinc. The exceedance of ecological screening levels does not mean that there will be an adverse impact, only that there is the potential for an adverse impact. DEQ required that the Terminal 5 sediments be capped within four years as a precautionary measure to protect wildlife. DEQ has not changed the requirement that the Terminal 5 sediments be capped. Post Office Bar sediments could be used to cap the Terminal 5 sediments, at the Port's discretion, because the contaminant concentrations in the Post Office Bar sediments are below screening levels.

The Port of Portland has indicated that in April 2011 they will begin covering a portion of the West Hayden Island dredge material placement site with two feet of Columbia River sand as required by the Terminal 5 beneficial use determination. This work should be completed in May 2011.

Comment #13:

Thank you for engaging us. The residents are not against maintenance dredging, safe navigation or jobs. There are 440 homes on West Hayden Island and 60% of the residents are senior citizens. There are many people of color. Many people are on a fixed income or low income. DEQ needs to do a better job analyzing our impacts. We shouldn't have to be forced to bear these risks. Why are we being singled out? DEQ is not respecting the local land use process. You don't care about us and that is wrong, unfair and unjust. Do not approve this permit and make the Port remove the soil or

cap it (Pam Ferguson, #12). This community is being asked to bear the risks while the benefits go to others (Jonathan Oster, #16). Jobs, safe navigation, port commerce are desired by all of us, but not at a huge cost. Many toxins have unknown consequences. Unlike the Japanese enduring unforeseen radiation, we do have choices and options, regardless of what the Port says about other locations being unavailable (Jimme Peters, email 4/13/2011).

DEQ's Response:

DEQ has analyzed the risk to people and wildlife. The main concern is for people or animals that might be directly exposed to contaminants as a result of working, recreating, visiting or otherwise using the dredge placement area. The contaminant concentrations are below levels that are safe for such uses. There is no significant risk to residents that live a half mile or more from the placement area.

Comment #14:

The residents are not against commerce and navigation. We don't want a dump on West Hayden Island. Why not dump these sediments at Ross Island? (Tom Dana #13).

DEQ's Response:

The Army Corps of Engineers and the Port of Portland are free to consider alternative disposal sites and propose alternative options to DEQ for review. The Port of Portland has indicated that there are no other placement areas permitted and available at comparable cost.

Comment #15:

I am against corporate greed. The BUD is not justified. This is a speculative use. (Sallinger #15, verbal comments, 4/12/2011) This is a speculative use (Bob Bernstein #18).

Under OAR 340-093-0280(2)(a) there must be "an identified or reasonably likely use for the material **that is not speculative**" (emphasis added). The proposed use described by the Port of Portland in its Beneficial Use Application (7-1-10) reads in its entirety "Fill material to increase site grade elevation prior to future development at West Hayden Island." Correspondingly, the Beneficial Use Determination issued by DEQ (7-8-10) states, "The use is as fill material to increase site grade prior to future development of the property." This "beneficial" use is in fact highly speculative. The property is not currently zoned for industrial development and there are no assurances that it will ever be zoned or permitted for this purpose in the future. The City has repeatedly emphasized that all options remain on the table with regards to West Hayden Island including a "no build option."

The West Hayden Island Resolution adopted by City Council on July 29, 2011 read in part as follows:

"BE IT FURTHER RESOLVED, this resolution sets forth the City Council's preliminary intentions and interim directions to the Bureau of Planning and Sustainability, based on the information available at this time, and nothing in this resolution constitutes a final decision concerning any land use planning action with respect to West Hayden Island. The City Council intends that any land use planning actions for West Hayden Island will be adopted in the future as required by the statewide planning goals, state law, the City's comprehensive plan, and the City's zoning code and may include the adoption of an annexation ordinance, zoning designations and a Plan District" .

In a letter dated September 17, 2010 from Portland Mayor Sam Adams to Port Director Bill Wyatt regarding the Beneficial Use Determination, the Mayor wrote the following:

That said, I do believe that the timing of the beneficial use permit application was unfortunate, relative to the City Council's recent hearing. Although regional decisions have designated portions of the site for future industrial development, I have been clear that all options should be on the table. In that context, the land use assumptions stated by the Port in the beneficial

use application (that future industrial development is a given) outcome behind closed doors. That was not the case, and I do not wish to convey that impression.

Under these circumstances and based on the common understanding of the term "speculative," we do not believe that the basis for approving placement of contaminated dredge materials on West Hayden Island can be considered anything other than speculative. DEQ staff have verbally stated that the agency intended a more narrow definition of the term "speculative" than common understanding would allow, specifically focusing on farmers who stockpile junk in their yards with no identified future use. However this narrow definition was never articulated in code. Furthermore we question whether placing contaminated materials on West Hayden Island for the purpose of filling the island for future development for which the land is not currently zoned is any less speculative than storing "junk" in the hopes that it one day will have commercial value. We do not believe that A BUD would have been issued if in fact DEQ had considered existing rather than speculative zoning. Nor do we believe it would it have been issued if other equally plausible future use scenarios such as protection as a park or natural area been considered.... Deny the BUD for placement of contaminated dredge materials on West Hayden Island for the purpose of preparing this island for future development – an uncertain outcome that meets any common understanding of the term “speculative”.” The community and environment would be best served by waiting until Portland City Council makes a final decision regarding annexation and rezoning in December 2011 (written comments from Bob Sallinger, Audubon Society, 4/17/2011).

DEQ’s Response:

Under the beneficial use rules, there must be an identified or reasonably likely use for the material that is not speculative. In the DEQ Solid Waste Program, the term “speculative” commonly refers to speculative accumulation, which relates to the stockpiling of industrial solid waste without any identified use for the material. DEQ does not allow the indefinite stockpiling of industrial waste that poses a threat to people or the environment.

The beneficial use rules do not require that a proposed use be 100 percent certain, rather “reasonably likely.” The Port of Portland has clearly identified the intended use is fill material at West Hayden Island. That dredged sediments have value as fill material in general is not speculative. The use of dredged sediments for fill material is a common practice.

According to the Port of Portland, dredged sediments have been placed at West Hayden Island for over 75 years. The Port of Portland is the site owner and has placed sediments at the West Hayden Island Placement Facility for over 13 years. In 2004 Metro identified West Hayden Island as a “Regionally Significant Industrial Area.” In 2010 Metro completed a draft Urban Growth Report that assumes approximately 380 acres on West Hayden Island is available for large lot future industrial development. The current zoning is Multiple Use Forest 19 Acre Minimum (MUF 19) with a Significant Environmental Concern overlay. The City of Portland has confirmed through Land Use Compatibility Statements, the most recent signed September 22, 2010, that the placement of dredged sediments is currently allowed on West Hayden Island (a pre-existing nonconforming use allowed outright).

In making a determination that the proposed use is beneficial, DEQ relied on the history of dredged sediment placement at the site, the fact that current land use allows sediment placement, that use of dredged sediments as fill material is a common practice, that the Port of Portland requires fill material to develop the property for future marine commercial or industrial use, that the sediment contaminant concentrations are below screening levels for current uses by people and wildlife, and that the City is engaged in a planning process to evaluate area uses that include marine development.

Comment #16:

The Environmental Justice Task Force is working with DEQ. DEQ has done a commendable job with training staff about environmental justice issues. ORS 182.545 requires that environmental justice be a substantive not procedural criteria of the state agencies. How will DEQ incorporate environmental justice into its decision-making? How will you include environmental justice in your analysis? It is DEQ's job to do this, but this is not identified in the BUD rules. The intent is always to make DEQ do the correct analysis to protect the community and avoid risks (Jonathan Oster, #16).

DEQ's Response:

DEQ recently developed "Beneficial Use Determination – Guidance on Public Notice & Participation" (April 6, 2011), which is posted at DEQ's beneficial use web page at <http://www.deq.state.or.us/lq/sw/disposal/beneficialuse.htm>. The guidance is intended to help DEQ staff assess the level of public interest in a beneficial use determination and the level of public notice and involvement appropriate for an application.

DEQ strives to be inclusive and that is why DEQ opened a public comment period on the Post Office Bar beneficial use determination and met five times with the community to hear concerns. DEQ disagrees that ORS 182.545 imposes a substantive duty on the agency.

Comment #17:

Portland is not an international shipping site; this is not a growing market and never will be. What DEQ and the Port are doing to the community is not fair. Don't destroy nature (Donna Murphy, #19).

DEQ's Response:

Comment noted.

Comment #18:

My husband had a stroke and zinc may be the cause. We already have a lot of development here. Maybe we will get a nature preserve when the sediments are covered (Barbara Nelson, #20).

DEQ's Response:

Zinc occurs naturally in soil and sediment. The concentrations of zinc detected in the Post Office Bar sediments are at naturally occurring concentrations for Oregon and do not pose a health risk to people.

Comment #19:

After attending the second meeting on the Post Office Bar dredging last night, my opposition has grown even stronger to placing the spoils on Hayden Island. The story keeps changing as to the proposed activities and as a citizen I will not stand for this deception and must bring attention to the mishandling of this project. We do not know what to believe and certainly do not feel that our best interests, health, or community are being considered (Jimme Peters, email 4/13/2011).

DEQ's Response:

Comment noted.

Comment #20:

DEQ cut off public interaction at the public hearing by stopping questions (Jimme Peters, email 4/13/2011).

DEQ's Response:

DEQ met with the community three times prior to the hearing to provide information on the beneficial use determination and allow for questions. At the public hearing, DEQ had limited time for an informational

presentation. DEQ wanted to ensure there was enough time during the hearing to allow for verbal comments by those who wished to comment. Unfortunately, that meant limiting time for questions.

Comment #21:

Sebastian Degens from the Port stated that "they were not sure if the spoils from T5 would be covered by the Post Office Bar material". The T5 spoils have contaminants that are three times the SLV allowed and we are just supposed to accept this as okay for our island. Being told that four years exposure could not hurt anyone until they determine what to do with the toxic dirt is far from comforting nor seems lawful. The Port only cares about its interests, not ours as indicated by dumping the Superfund T5 spoils on our community.

All these loopholes and bulldozing by the proverbial "we" that is comprised of the various staff from the Port, DEQ, Army Corps, City of Portland, paying consultants to testify, and others are clearly in joint negotiations without us. These people disregard the public process as a nuisance and their actions are clear, move forward, right or wrong, the public and our community does not matter.

Please remove the T5 soils, stop Post Office Bar from being placed on Hayden Island and let our green space remain as a wildlife and recreation park as nature intended (Jimme Peters, email 4/12/2011).

DEQ's Response:

Contaminant concentrations in the Terminal 5 sediments do not exceed human health screening levels for current uses of property. Lead and zinc exceed ecological screening levels that are based on Oak Ridge National Laboratory research represented by the American Robin and assuming their diet is 20 percent soil. DEQ uses these screening levels to be protective of threatened or endangered species. DEQ guidance recommends using five times these screening levels (a 5x multiplier) to be protective for populations of non-threatened or endangered species. All contaminants detected were below the levels for non-threatened or endangered species. DEQ's requirement to cap the Terminal 5 sediments was a precautionary measure specifically to protect threatened and endangered birds, such as the bald eagle.

The Port of Portland has indicated that in April 2011 they will begin covering a portion of the West Hayden Island dredge material placement site with two feet of Columbia River sand as required by the Terminal 5 beneficial use determination. This work should be completed in May 2011.

Comment #22:

DEQ is allowing up to four years for the Port to cover the sediments from Terminal 5 placed in the sediment facility. Birds and wildlife may not live that long. We brought up groundwater and DEQ had to go back and check this risk. The agencies have scrambled to go back and justify this BUD. Revisit the BUD policy; it is not working and not instilling confidence (Bob Sallinger, Speaker #15).

DEQ's Response:

DEQ has not identified any new or conflicting information that suggests there was an error in the original determination or that there will be adverse impacts.

DEQ is working to improve the beneficial use evaluation process, public involvement and other aspects of implementing the new rules. Since the rules were adopted DEQ has posted a fact sheet, a beneficial use evaluation report form, and public involvement guidance which are posted on DEQ's beneficial use web page at <http://www.deq.state.or.us/lq/sw/disposal/beneficialuse.htm>. DEQ will continue working to improve implementation of the new rules.

Comment #23:

“Under OAR340-093-0290(9)(a) The Department may modify or revoke a case-specific beneficial use determination or a demonstration project authorization if it determines that the application includes a material misrepresentation or false statement. The Post Office Bar Applications contains a significant material misrepresentation of fact. The application states, "The use is as fill material to increase site grade prior to future development of the property." Later it states, "Upon development of the area, the site will likely be covered with landscaping or hardscaping..." The DEQ BUD is replete with restatements of this inaccuracy. For example, in a letter dated, June 24, 2010, DEQ writes, "*The Port of Portland has indicated to DEQ in the application and in past meetings that a large volume of fill material is needed to meet the future development objectives for this location....*" In the Post Office Bar BUD dated July 8, 2010 DEQ writes, "*DEQ understands that the Port of Portland intends to develop the property for commercial or industrial use.*" Both the Port application and the BUD fail to recognize that this future use is speculative and represents misrepresentation by omission” (Bob Salinger, Audubon Society, April 17, 2011 written comment).

DEQ’s Response:

DEQ does not consider the Port’s beneficial use application to contain false information. Filling followed by landscaping or hardscaping is common development practice and doesn’t suggest an inaccuracy in the application. In this case, DEQ considers the use of sediment as fill material in anticipation of proposed future development to be reasonably likely.

Comment #24:

“The placement of the dredge materials on West Hayden Island would violate 340-093-0270 (1)(d) by increasing hazardous substances in a "sensitive environment." West Hayden Island is captured under the State's definition of a "sensitive environment" under OAR 340-122-0115(50) an identified Goal 5 resource site” (Bob Salinger, Audubon Society, April 17, 2011 written comment).

DEQ’s Response:

The Post Office Bar sediments are currently in a sensitive environment, the Willamette River. West Hayden Island has not been comprehensively sampled to determine existing concentrations of hazardous substances. In DEQ’s experience, low concentrations of hazardous substances are present in soil and sediment in the Portland/Metro area, often termed anthropogenic background or baseline, from historic urban activities. We also know that the concentrations of hazardous substances in the Post Office Bar material is less than concentrations detected in other dredge sediment placements (e.g., Terminal 5) at West Hayden Island. Additionally, DEQ determined that the concentrations of hazardous substances in the Post Office Bar sediments are at a low level and will not adversely impact people or the environment at West Hayden Island.

Comment #25:

“Reinitiating Consultation with NOAA Fisheries: It is our understanding that NOAA Fisheries verbally encouraged the USACOE to reinitiate consultation over potential impacts to listed salmonid species due to potential return of contaminants to the river via groundwater. We are concerned that the USACOE has failed to date to reinitiated consultation. We do not believe that the BUD should be reissued until this issue is fully resolved” (Bob Salinger, Audubon Society, April 17, 2011 written comment).

DEQ’s Response:

The U.S. Army Corps of Engineers evaluated the potential for contaminants from dredged material placed at West Hayden Island to migrate to groundwater and hence to the Columbia River or other water bodies and found it to be negligible. In addition, a DEQ hydrogeologist concluded that run off to the Columbia River or wetlands via groundwater will have virtually no impact from chemicals in the sediment placement areas. The pertinent findings include:

- The dredged sediments are silty and clay-like.
- The material underlying the disposal cell is sand, but also contains significant quantities of silts.
- It is more likely that silty material will absorb DDT (a pesticide) and polychlorinated biphenyls (PCBs) rather than these chemicals migrating to groundwater or the Columbia River.
- Using conservative estimates and calculations, DEQ estimates that the time needed for groundwater to flow from the placement cell to the Columbia River is greater than two years, during which time silty material will absorb any potential contaminant runoff along the flow path.
- Even if chemicals such as zinc enter groundwater the flow of groundwater will be very slow, no more than 0.03 cubic feet per second.
- Using the lowest flow in the Columbia River on record (63,600 cubic feet per second on 9/9/2001) at a nearby gauging station, the dilution ratio of Columbia River water to discharging groundwater is over 2 million to 1.
- Rainfall appears to form the wetlands rather than groundwater discharge because geotechnical and monitoring wells indicate the depth to groundwater is about 10 to 15 feet below ground surface. This means that any chemicals in the groundwater will not reach the nearby wetlands.

Questions relating to DEQ's 401 Water Quality Certification were addressed in DEQ's September 23, 2010 Evaluation Report and Findings for the dredging project.

Comment #26:

“To obtain authorization under the beneficial use rules, the applicant must designate a productive use of the material including an identified or reasonably likely use for the material that is not speculative. The Port's dredged material management facility is itself an essential part of the navigation dredging process for the Columbia and Willamette river system, irrespective of future use of West Hayden Island. This use in and of itself is not only beneficial but essential to navigation and the commerce dependent on it. West Hayden Island has been a repository of dredged material for decades and the facility is identified in the environmental documentation for both the Post Office Bar project and the recently completed Columbia River Channel Deepening project. ...The Port plans to develop marine terminal facilities on West Hayden Island and in our BUD application we identified the intended use of dredge material as “fill material to increase the site grade elevation prior to future development at West Hayden Island.” The land was acquired for this purpose in 1994, it was brought into the urban growth boundary by the previous owner for maritime industrial purposes, and was permitted for this purpose in the 1980s. The Port is now seeking annexation into the City of Portland in furtherance of this goal. The annexation process is further indication that marine terminal development is an “identified and reasonably likely” use. Eventual development will require much more fill from the adjoining river systems. Further detail on the land use history of the Island, and the role of future marine industrial development, is provided in the enclosed memorandum from the Ball Janic law firm, which the Port has previously shared with various stakeholders” (Marla Harrison, Port of Portland, April 18, 2011, written comments).

DEQ's Response:

DEQ does not consider a dredge disposal facility to be a beneficial use of solid waste, DEQ does consider the proposed use of sediment as fill for future development to meet the productive use requirements of the beneficial use rules. Comments noted.

Comment #27:

“The evidence in this proceeding (both the original application and the reconsideration process), and the associated Section 401 Water Quality Certification proceeding, shows beyond doubt that there will be no adverse impact to public health, safety, welfare, or the environment from the placement of Post Office Bar material at West Hayden Island. The material has been tested and vetted numerous times, by multiple agencies specializing in the analysis of sediment and its relation to human and ecological health. Most recently, the testimony of Dr. Teresa Michelsen explains why

the low levels of contamination present in the Post Office Bar material will not adversely affect the adjoining neighborhoods, human activities at the dredged material site itself, wildlife on the Island, water quality, or any other environmental consideration. In the two public information sessions and the public hearing conducted in this reconsideration process, no evidence was brought forward casting any doubt on these conclusions” (Marla Harrison, Port of Portland, April 18, 2011, written comments).

DEQ’s Response:

Comments noted.

Comment #28:

“The Port recognizes that there are low income and minority households on Hayden Island. The Port also recognizes that there is opposition within the residential community to the continued use of the dredged material placement facility. While the Port respects the opinions of the Hayden Island residents opposing the Post Office Bar project, the Port does not accept the contention that its continued use of its facility will adversely affect the adjoining community or the environment at large. We are not aware of evidence having been submitted in this proceeding concerning the status of particular Island neighborhoods as “environmental justice communities.” At least one analysis (attached) done in connection with the Columbia River Crossing project, has established that Hayden Island as a whole does not constitute an environmental justice community under federal standards. We recognize that state and federal standards may differ, but we assume that both required some form of evidence to establish the presence of an environmental justice community and some environmental impact on that community. The impact can then be analyzed to determine if it is inequitable or disproportionate. The evidence indicates that there will be no impact from the Post Office Bar project on the nearby residential communities, on the human and wildlife activities at the placement location, or on the environment generally. Consequently, there will be no inequitable or disproportionate impact” (Marla Harrison, Port of Portland, April 18, 2011, written comments).

DEQ’s Response:

Comments noted.