

WILLAMETTE COVE RECORD OF DECISION CONTINGENCY REMEDY—STAFF DISCUSSION WITH COUNCIL

Date: 6/13/2022
Department: COO, Parks & Nature
Meeting Date: 6/28/2022

Prepared by: Brian Moore/Paul Slyman,
Presenter(s) (if applicable): Marissa
Madrigal, Jon Blasher, Paul Slyman +
Invited Testimony
Length: 45 minutes

ISSUE STATEMENT

Metro owns the 26-acre Willamette Cove and in partnership with the Port of Portland participates in a voluntary clean up agreement with Oregon Department of Environmental Quality for environmental remediation of the site's uplands. After receiving information from a Remedial Investigation and a Feasibility Study, among other technical work conducted by Metro and the Port of Portland, DEQ issued a Record of Decision (ROD) in March 2021 identifying the selected remedy. In developing their Record of Decision, DEQ conducted a 6-month public comment period and accepted over 180 comments. DEQ directed Metro and the Port to remove the most contaminated soils from the site and maintain moderately contaminated soils in an onsite consolidation area. In response to significant public comment, DEQ provided Metro with a "contingency remedy" option to "eliminate or greatly reduce the volume of soil to be consolidated onsite and instead transport the soil offsite for disposal at a regulated waste facility."

The ROD's selected remedy and the contingency remedy both meet the clean-up requirements of state law, and implementation of either remedy will allow for full access of the upland site, on and off trails, in accordance with Metro's intended future use. This includes any engineered cap areas, which will be designed to withstand normal human activity as well as storms and seismic events. In making their selection, DEQ determined that, "The selected remedial action for contaminated soil and sediment at the Willamette Cove Upland Site is protective, and reflects the best balance of tradeoffs considering effectiveness, long-term reliability, implementability, implementation risks, and reasonableness of cost. Long-term monitoring and maintenance will be required to ensure the remedy remains protective over time."

Staff brought this topic to Council for consideration at their April 27, 2021 work session, and again at their December 2, 2021 work session. Council previously discussed values associated with the decision about permanent placement of the soils. While the financials and volumes associated with the remediation will change over time, the values established by Council at their December 2, 2021 work session have guided staff's work on this project:

- Community impacts
- Environmental impacts
- Financial costs

- Timeliness

Given the evolution of goals for the site over the last 26 years, staff is looking to Council to establish clear direction for the permanent placement of the moderately contaminated soils.

ACTION REQUESTED

On April 27, 2021, Metro Council directed staff to seek an independent third-party analysis of the options available under the ROD contingency remedy. Staff hired a consultant, Maul Foster & Alongi (MFA), with expertise in evaluating management of contaminated sites, to collaborate with staff, Tribes, and community partners to evaluate the process. The report is complete and the results of the analysis are included herein. Staff requests that Council discuss questions and consider the implications of the report prior to making a decision about the remedy at a business meeting scheduled for July 28, 2022.

Timeline:

Date	Milestone
November 2000	Voluntary Cleanup Program Agreement with DEQ
March 2019	Feasibility Study Completed
March 2020	DEQ Staff Report and public comment period
March 2021	DEQ Record of Decision (ROD)
Dec 2021	Council directed third-party assessment of Contingency Remedy
July 2022	Contingency Remedy analysis submitted & Council decision sought
Fall 2022	Basis of Design Report for upland cleanup (set for first submittal this fall)
2023	Remedial Design commences
2024	Remedial Design final due to DEQ and Residual Risk Assessment Begins
Future	Site remediation begins when it can integrate with the comparable work for in-water, as upland remediation is inextricably linked with in-water remediation.

IDENTIFIED POLICY OUTCOMES

Previous input from Council is centered on the values discussion in December of 2022. This decision will reflect Council's desired implementation of those values.

POLICY QUESTION(S)

Where would Council prefer to permanently place the moderately contaminated soil that will be excavated as part of the voluntary clean up action for the upland portion of the Willamette Cove site?

POLICY OPTIONS FOR COUNCIL TO CONSIDER

Staff recommends Council consider one of three scenarios:

- Selected Remedy—Onsite consolidation of moderately contaminated soils; OR
- Contingency Remedy—

- Offsite disposal of moderately contaminated soils by conveyance contemplated in MFA report
- Offsite disposal of moderately contaminated soils by conveyance contemplated in MFA report and possibly augmented by conveyance other than trucking, if feasible

All scenarios listed above require excavation and offsite disposal of all soil exceeding hot spot levels for human health and all soils exceeding non-dioxin/furan (e.g. metals including mercury) hot spot levels for ecological health. This is estimated to be approximately 4000 cubic yards of soil. Excavation and management of the moderately contaminated soil is in addition to that amount.

STAFF RECOMMENDATIONS

Staff recommends Council discuss the information presented and identify any questions they would like to have answered prior to making a decision at their July 28, 2022 business meeting.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

This report strives to address the framework of values Council established previously.

The values of community and environmental impacts are inextricably linked. With a broad sense of community in mind, staff worked with the Portland Harbor Community Coalition (PHCC) who shared the process with other local community organizations. Staff also sought and received input from the Five Tribes (Confederated Tribes of Grand Ronde, Confederated Tribes of Siletz Indians, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon and the Nez Perce Tribe), and the Yakama Nation (CTBYN).

Input and comments from the Yakama Nation, Five Tribes and PHCC are included in the attached MFA report and described here.

Community members have continually made their perspectives known through input to this process as well as comments to Metro Council during public testimony and other opportunities. Community members are already burdened by contaminated sites throughout Portland Harbor and would like more information about the historical contamination left behind by industrialization, restrictions that would be placed on Willamette Cove from a consolidation area, the risks associated with episodic events such as a Cascadia Subduction Zone earthquake, the residual risk of contaminants left at the site, and more. Some community members feel the short term impacts of transportation and greenhouse gas emissions are generally worth the tradeoff of reducing the absolute quantity of contaminants from the site.

Staff recognized the importance of consulting and engaging with Tribes as the Willamette River is of significant historic, cultural and ongoing importance to multiple Tribes in the region who have maintained strong ties to and relied upon the river, its resources and

lands for traditional and cultural practices, sustenance and subsistence, and trade and travel since time immemorial. On October 6, 2021, Metro invited consultation with the six Tribes involved in the Portland Harbor Superfund Site to inform Metro's near and long term activities for the Willamette Cove uplands, including evaluation of the contingency remedy option as well as future development of priorities for habitat restoration and passive recreation.

Shortly after Metro's invitation to consult, staff confirmed the Five Tribes (Confederated Tribes of Grand Ronde, Confederated Tribes of Siletz Indians, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon and the Nez Perce Tribe) would engage with Metro through their shared consultant Industrial Economics Incorporated, IEc. Metro also confirmed the Confederated Tribes and Bands of the Yakama Nation (CTBYN) would engage through the Superfund Section of the Yakama Nation Fisheries Program.

Initial meetings between Metro and the Five Tribes and CTBYN occurred in November and December, 2021 respectively. Since then, additional staff-to-staff meetings and communications have informed MFA's analysis. Additional discussion and meetings are anticipated as Metro works to understand tribal priorities and interests that should inform site conservation planning.

Input from the Five Tribes and CTBYN highlighted the importance of the Willamette River, past, present and future, especially regarding natural resources restoration and conservation for First Foods such as salmon. Tribal input and priorities shared with Metro have stated that treaty protected resources should be able to thrive at the site and highlighted the importance of exercising treaty protected rights; spanned the contingency remedy analysis including ground water, flooding and seismic risk and management considerations for a potential onsite containment cell and its design; discussed the impact that environmental contamination and pollution has had to Tribes and treaty protected resources; expressed desires for smart and balanced passive recreation at the site which supports habitat restoration and conservation; and also shared the importance of managing the site in a holistic manner to achieve integrated restoration and conservation of the river, critical habitat and natural and cultural resources.

Through IEc, the Five Tribes shared a desire to see the work done properly and for Metro to take into account habitat, aesthetics, and intended use thoughtfully and at the outset of the decision making process. More specifically IEc shared priorities, concerns and requests to Metro including better definition around vague terms used in the ROD and the report such as "full cleanup" or "full removal" or "consolidation cell, consolidation unit or containment cell" and recommended a refinement of terms. They requested clarification that removal of the moderately contaminated soil would provide additional ecological benefit to the site and requested citations where possible. They also recommended that a geotechnical evaluation be completed prior to making a decision about the feasibility and siting of an onsite consolidation area, and a more complete accounting of greenhouse gas emissions, among other things.

The Five Tribes also expressed an interest and desire for Metro to uphold its conservation mission and vision at the site so that opportunities for the Tribes to access the land can be explored with Metro in the future

Yakama Nation representatives introduced Metro staff to the over-arching sentiment and direction that Tribal Elders provided to the Yakama Nation Fisheries Department's work - *to make the way it was and the way it was intended*. This sentiment has continued throughout staff-to-staff engagement with CTBYN, including in questions about Metro's approach to habitat restoration as well as in specifics about site intended uses. The Tribe also highlighted our respective roles as governments, who for the benefit of our communities and neighbors, have the responsibility to do important work for future generations. Yakama Nation priorities, concerns and requests shared with Metro for the contingency remedy analysis also included:

- examining the short and long term costs for mitigation risks, long-term monitoring and maintenance of both alternatives;
- evaluating the long-term climate change impacts and resiliency of the site and river, and flooding and seismic risks and how these might affect an onsite containment cell;
- further assessing the trade-offs to the community in terms of a long-term asset and short-term disturbance; and
- shared the need for an integrated plan that allows habitat and community benefits to flow seamlessly from the upland to the riparian zone to the subtidal in-water zone, among others.

The Tribe also expressed that leaving material onsite is not as protective as removing it, that contaminated materials could still be encountered or released over time if left in place on the site, and that the comprehensive removal option should be very seriously considered.

The ecological differences between the two options depends heavily on perspective and values. For the purposes of this study, there was not sufficient information available to determine a functional difference between the options. The intended use of the site includes a trail and for habitat restoration and sufficient infrastructure to mitigate human impacts to the restored habitat and consider opportunities for passive recreation. There is currently no site design or concept which addresses those items. Therefore identifying locations to retain soil on-site that would not interfere with habitat restoration was infeasible. Retaining all soil on site from a habitat creation perspective is feasible but could modify the types of habitat created and their precise location. Conceptual plans for placement are necessary for an in-depth analysis of these ecological trade-offs.

One area of analysis that provided a distinct difference between the options is the financial cost analysis. Based on planning assumptions, there is a quantifiable evaluation of retaining the soil on-site as opposed to disposing of the soil off-site. The analysis resulted in a bottom line cost comparison as follows:

	Contingency Remedy	Selected Remedy
ROD Estimated Construction Cost (includes top soil cover)	\$11.8 million	\$8.1 million
2022 MFA Adjusted Estimated Construction Cost	\$17.5 million	\$9.5 million

It is important to note that these are planning level estimates only, and in every case will require additional data and estimation from upland sampling and a completed remedial design. Additional detail on these estimates is included in the MFA report. It is also important to note that the 2022 adjusted costs do not include estimates for alternative transportation modes such as barge or train, which are given preference in the DEQ ROD.

From a timeliness perspective, the presumption is that both options are functionally equivalent. Either option would be integrated into the Basis of Design Report and then into the Remedial Design. Implementation of the Remedial Design will commence in conjunction with the same work for the Willamette Cove in-water area.

The MFA report provides more detailed analysis than presented here and is attached for review and consideration.

- Explicit list of stakeholder groups and individuals who have been involved in data and policy development.
 - Six Tribes as described above
 - Oregon Department of Environmental Quality
 - Port of Portland
 - City of Portland
 - Residents in the neighborhood
 - Cathedral Park Neighborhood Association
 - Portland Harbor Community Coalition
 - Portland Harbor Community Advisory Group
- Legal Antecedents
 - ORS 465.314 and OAR 340-122-0090
 - Metro Council Resolution 20-5149
 - Council Budget Note adopted June 2021

BACKGROUND and REMEDY DESCRIPTION

The selected remedy or the contingency remedy both require excavation and offsite disposal of all soil exceeding hot spot levels for human health and all soils exceeding non-dioxin/furan (e.g. metals including mercury) hot spot levels for ecological health. This is estimated to be approximately 4000 cubic yards of soil.

The selected remedy allows for consolidation and placement in an engineered area (“consolidation area”) “moderately contaminated” soil which is defined as a)soil posing an

excess risk to humans but below hot spot levels; and b) soil with higher risk levels relative to plants and animals, including hot spots. Capping of the moderately contaminated consolidated soil will consist of a demarcation layer or woven fabric and a minimum of 3 feet of clean cover material. This engineered consolidation area must be engineered to meet long-term requirements for stability and tailored to accommodate Metro plans for a nature park.

The decision regarding the long-term resting place of the moderately contaminated soils holds significance for the upland remedial design. As described in this report and the accompanying MFA report, this decision also has great significance to the Tribes and community involved in the project. While all parties have different perspectives and thresholds for what is practical, most parties that have expressed a preference for the soil to be removed from the site.

Typically on this kind of project, due to the significant cost to return the site to a pre-colonial condition, the Parks and Nature department would identify an acceptable alternative that moves toward progress and minimizes costs and financial impacts to other projects or programs. In the case of the Willamette Cove, the alternative consisted of supporting implementation of the north Willamette greenway Trail, and returning the remaining portions of the site to a natural condition consistent with present topography and taking into account future climactic shifts. More recently, this expectation has shifted toward including sufficient improvements to improve the sustainability and management of natural habitat in an otherwise highly urbanized area.

SITE HISTORY

Metro purchased the 26-acre Willamette Cove property in 1996 pursuant to the Open Spaces, Parks, and Streams Bond Measure 26-26 and has held the property for purposes of creating a green space and extension of the multi-use North Portland Greenway trail. Habitat restoration plans include a natural area to support aquatic, riparian, bird and native vegetation species. The trail is shown on the City of Portland's comprehensive plan and is part of the regional trail plan.

In November 2000, Metro and the Port of Portland entered into a Voluntary Agreement with Oregon Department of Environmental Quality to perform a remedial investigation/feasibility study (RI/FS) and implement any needed source control measure to prevent releases to Portland Harbor.

In December 2000, the US Environmental Protection Agency (USEPA) identified the Portland Harbor area of the lower Willamette River as a Superfund Site and placed it on the National Priorities List, primarily due to concerns of contamination in the river sediments and the potential risks to human health and the environment from consuming the fish.

Metro and the Port of Portland have made significant investments in environmental studies and testing to ensure the site is eventually cleaned up to support our region's desires for healthy, sustainable natural areas. In addition to the many studies and samples

taken at the site, Metro and the Port of Portland have ensured interim actions were taken to stabilize and secure the site.

In 2004, a petroleum sheen was observed on the water, in the innermost portion of the cove adjacent to the East Parcel. Later that year, approximately 20 tons of soil were excavated and placed offsite in a permitted landfill.

In 2008, approximately 987 tons of soil containing lead and other metals were removed from the site, including 356 tons of soil that was stabilized and 631 tons of soil that did not require stabilization, and placed offsite in a permitted landfill.

In 2015/16, approximately 5000 tons of soil containing dioxins/furans and other contaminants were excavated and disposed of offsite at a permitted landfill.

In February 2020, the Portland Harbor Community Coalition (PHCC), anticipating the DEQ Staff Report about to be released signaling a preference for remedy selection, sent a letter to Metro Council with requests regarding Willamette Cove.

Later in 2020, Council sent a letter to DEQ Director Richard Whitman to clarify Metro's interests in the site, as well as specify for DEQ Metro's understanding of the remedies that DEQ is evaluating for the upland soil. That letter, signed by the entire Metro Council, stated "...that the community expects us to remediate the site such that the safety of people and the environment are protected now and into the future, mature trees are protected, and a broad range of passive recreational activities, including beach access, walking, bicycling, wildlife viewing, picnicking, child play and education, swimming, fishing, non-motorized boating, and cultural interpretation may eventually be considered at the site."

A Council business meeting was conducted in December 10, 2020, which attracted nearly 30 written comments in advance. Nineteen people provided verbal testimony during the meeting. Council also received a letter from the Yakama Nation regarding their concerns of a proposed onsite containment cell at Willamette Cove. The testimony at both the July work session and December council meeting expressed a desire for a "complete cleanup" that did not involve consolidation cells or extensive capping of environmental contamination.

Council adopted Resolution 20-5149 as amended, and directed:

1. Metro Council authorizes and directs Metro Chief Operating Officer to include Willamette Cove as a Metro parks and nature destination listed in Exhibit E to Resolution No. 19-4988 eligible for 2019 Bond Measure funds; and
2. Metro Council affirms its support of and commitment to explore trail development, habitat restoration, and a broad range of passive recreational activities at Willamette Cove consistent with its use as a natural area, for example but not limited to, walking, hiking, bicycling, beach access, wildlife viewing, picnicking, and cultural interpretation; and

3. Metro Council shall convene a work session within 30 days of the issuance of the DEQ record of decision for Willamette Cove to discuss additional and voluntary actions that Metro could take at the site to further improve its environmental condition.
4. Metro staff shall prepare a plan for meaningful public engagement to identify community priorities for future passive recreational opportunities and trail development consistent with protection and restoration of natural resources at Willamette Cove, and submit this plan to Metro Council within four months of the date DEQ issues its record of decision on remedial action.

DEQ selected the preferred remedy from among 9 alternatives in March 2021. The criteria DEQ uses to evaluate the remedial action alternatives are defined in OAR 340-122-090, and establish a two-step approach to evaluate and select a remedial action. The first step evaluates whether a remedial action is *protective*; if not the alternative is unacceptable and the second step evaluation is not required. The remedial alternatives considered protective are evaluated and compared with each other using five balancing factors. The five balancing factors are 1) effectiveness in achieving protection, 2) long-term reliability, 3) implementability, 4) implementation risk, and 5) reasonableness of cost.

DEQ's analysis of these factors is included in the Record of Decision.

Metro and the Port of Portland under the direction of DEQ are about to commence Remedial Design sampling, which will allow for greater site certainty as we better understand the full extent of contamination. Following that work, the partners will submit a Basis of Design Report to DEQ and then begin the Remedial Design process this winter. The 95% Remedial Design is due to DEQ in spring 2024, to coincide with a similar document for the in-water portion of the site. Staff is happy to continue reporting to Council on the progress at the site.

ATTACHMENTS

MFA Report including appendices

[For work session:]

- Is legislation required for Council action? ☒ Yes ☐ No
- If yes, is draft legislation attached? ☐ Yes ☒ No
- What other materials are you presenting today? We will be inviting testimony from involved Tribes and Portland Harbor Community Coalition