

WILLAMETTE COVE RECORD OF DECISION—STAFF DISCUSSION WITH COUNCIL

Date: April 6, 2021
Department: COO
Meeting Date: April 27, 2021

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Length: 20 minutes (+ 40 Q&A)

ISSUE STATEMENT

Metro Council adopted Resolution 20-5149 on December 10, 2020, directing staff to bring the Departmental of Environmental Quality Record of Decision (DEQ ROD) for Willamette Cove to a work session. The purpose of the work session is two-fold: one to discuss the selected remedial action and two, to discuss whether Metro should explore additional and voluntary actions Metro could take at the site. This presentation will begin to explore those actions and how to approach consideration of one specific action— a contingency remedy—authorized in the DEQ ROD.

The Record of Decision selected a remedial action for the responsible parties to implement to address upland soil contamination at the site in accordance with state statutes and DEQ administrative rules. The remedy selected involves both removal and containment of soils, identified as “4c” in the DEQ ROD. Following implementation of the selected remedy, people will be able to safely engage in passive recreation across the entire upland area, on and off trails, without restricted areas or fencing. Site conditions will also be safe for wildlife. As above, the Record of Decision also authorizes a “contingency remedy” under which the containment cell can be reduced or eliminated.

The presentation will describe the proposed remediation strategies of the recently-issued Record of Decision and seek council direction whether staff should begin exploring the contingency remedy by evaluating the short and long term additional costs, benefits and effort related to overall site remediation, restoration, and possible future operations.

Additional information and background on the site is included in the Strategic Context section of this staff report.

ACTION REQUESTED

Seeking Council direction on additional or voluntary actions Metro could take at Willamette Cove or additional studies Council would like to see performed.

Timeline:

March 31, 2021 DEQ Record of Decision Issued

April 27, 2021 Work Session discussion of Record of Decision and additional or
voluntary actions

July 1, 2021 Staff submittal of 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 due

TBD Remedial Design for Inwater (shoreline) Actions

IDENTIFIED POLICY OUTCOMES

Policy Outcomes for Willamette Cove Upland Soil Remediation are driven primarily by three governing documents.

Metro’s Six Desired Regional Outcomes—Vibrant Communities, Economic Prosperity, Safe and Reliable Transportation, Environmental Leadership, Clean Air and Water, Fairness and Equity—direct Metro staff in evaluating programs, budgets, and decisions. It is staff’s desire that decisions on the remediation of Willamette Cove further several of these desired outcomes, specifically Vibrant Communities, Environmental Leadership, Clean Air and Water, and Fairness and Equity.

Metro’s Strategic Plan to Advance Racial Equity, Diversity, and Inclusion, adopted by Metro Council in June 2016, aims to remove barriers for communities of color through a series of recommendations and actions to create equitable outcomes for all residents of the region. It does this through sharp focus on five goals outlining how we support regional partners; engage with communities of color; hire, train and promote our workforce; create safe and welcoming services and destinations; and allocate resources to advance racial equity. It is staff’s desire that decisions on the remediation of Willamette Cove further several of these goals, specifically creating safe and welcoming services and destinations.

Metro’s 2019 Parks and Nature bond makes commitments to protect clean water, restore fish and wildlife habitat and provide opportunities for people to connect with nature close to home. The bond provides funding across six program areas—Protect and restore land; Local parks and nature projects; Nature in Neighborhoods capital grants; Metro parks improvements; Walking and biking trails; and Large-scale community visions—and centers decision-making around racial equity. It prioritizes outcomes that benefit people of color, Indigenous people, people with low incomes, people with varying abilities and other historically marginalized groups who have not benefited equitably from past investments. The bond measure also prioritizes work to make the region more resilient to climate change. Willamette Cove was included among the list of parks eligible for funding under the “Metro parks improvements” in Resolution No. 20-5149.

POLICY QUESTION(S)

Should Metro evaluate the short and long term additional costs, benefits and effort related to overall site remediation, restoration, and possible future operations related to the contingency remedy or other additional actions?

POLICY OPTIONS FOR COUNCIL TO CONSIDER

Metro Council could direct staff to only proceed with implementing the upland soil remediation actions as described in the DEQ Record of Decision. This remedy, known as option 4c, requires the following: Soil containing human health hot spots will be removed for offsite disposal; remaining soil exceeding human health risk levels and ecological hot spots will be excavated and consolidated onsite in an engineered containment cell; and remaining soil with residual ecological risk will be managed using covers. This remedy is deemed protective of people and the environment and has been extensively examined by DEQ and compared to nine other possible remedies for protectiveness, effectiveness, long-term reliability, implementability, implementation risk, and reasonableness of cost.

As part of this Record of Decision, DEQ has authorized a “contingency remedy.” This contingency remedy provides the opportunity, during remedial design and in consultation with DEQ, to perform additional measures beyond those identified in the selected remedy, including additional removal activities to align with final plans for Willamette Cove. Under this process, parties can eliminate or reduce the volume of soil to be consolidated onsite and instead transport the soil offsite for disposal at a regulated waste facility.

According to the ROD, performing parties would inform DEQ of their intention to invoke the contingency, presumably following pre-remedial design sampling but prior to preparing the Basis of Design Report for the final remedy. DEQ goes on to note that this would require adequate preliminary plans on performing parties’ behalf to scope additional removal activities and refine remedial cost estimates.

Thus, Metro Council could direct staff to begin to implement the upland soil remediation actions as described in the DEQ Record of Decision, and also to study additional and voluntary actions Metro could consider. These additional and voluntary actions may include evaluating the contingency remedy as outlined in the ROD, or researching other possible actions such as those described by EPA in their Green Remediation Guidelines, or other actions.

Should Metro Council direct staff to evaluate additional actions, staff would engage environmental consultants other experts in evaluating detailed work related to a contingency remedy, or other voluntary actions, to more fully understand the effort and costs, and corresponding risks involved.

STAFF RECOMMENDATIONS

Staff recommends Metro Council direct them to engage environmental consultants or other experts in evaluating detailed work related to the contingency remedy or other voluntary actions, and an evaluation of short and long term additional costs, benefits and effort related to overall site remediation, restoration, and possible future operations.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

Background: 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 North Portland Greenway 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 Willamette River sediments and the potential risks to human health and the environment from consuming the fish.

Metro and the Port's agreement with DEQ has supported 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, including:

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.

Metro Council Actions and Direction: 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. Among other things, their letter signed by dozens of community members requested the following:

Emerging Remedial Design priorities:

- Design the remedy to include recreational uses integrated into the site, not just along the outer edge (this may change DEQ's current understanding of what the Willamette Cove upland site remedial design should be; passive recreation shall include, but not be limited to, the community's vision for safe access to the river and a site accessible to recreational users)
- Earthquake, 100 & 500-year flood-proof remedial design (no consolidation of contaminants on site)
- Cleanup as much as possible to ensure long-term health of communities and wildlife (secure supplemental funds to make it happen - don't let cost get in the way)
- Promote testing of bioremediation and other alternative technologies and if results are positive, then support the application of bioremediation site-wide as a model for other superfund sites in the region and country.

The letter continued to request specifically that "Metro Councilor Sam Chase request that Willamette Cove come as a topic of discussion at a Metro Council worksession once DEQ has proposed a remediation plan for the site, sometime between March 2-April 30, 2020." In the letter the PHCC recommended that the purpose of the session will be to allow for in-depth discussion of consideration of the DEQ recommendation, and direction for Metro's future vision of Willamette Cove.

That worksession was conducted July 9, 2020, and included representatives from PHCC, Audubon and other community groups as well as Parks & Nature Director Jon Blasher and members of his team. A majority of comments from the community centered on the levels and types of cleanup that the PHCC and other community members feel are adequate.

Later in 2020 year, 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 Public Comment and Response: Prior to issuing this Record of Decision, DEQ completed extensive public notice starting in March of 2020. Given the community interest in the property, DEQ allowed for six months of comment and received nearly 200 individual submissions. DEQ synthesized many of those comments into the following themes:

More Removal/Offsite Disposal—A large portion of comments call for a “full cleanup” of contamination or a “full removal” of contamination. DEQ points out that both the full removal and proposed consolidation area approaches to site cleanup will encounter the same challenges if contamination exists at greater depths than current data suggest. In other words, if there is contamination below three feet, additional areas may require capping material to achieve protective conditions. Under both alternatives, it will be safe to access all portions of the site after cleanup. Site conditions will also be safe for wildlife.

Long Term Reliability—Comments in support for more removal or offsite disposal were tied to concerns of potential future releases of remaining soil. Other concerns questioned the adequacy of long-term monitoring and maintenance as well as associated long term costs. DEQ’s response includes noting that onsite consolidation and capping has been successfully implemented in numerous instances along the Willamette River, statewide and nationwide and the consolidation area cap will be designed to withstand seismic and storm or flooding events. A long term monitoring and maintenance plan will be prepared for DEQ approval.

Bioremediation—Several comments supported integrating fungi-based technology into the cleanup plan. DEQ noted that the Port of Portland is currently funding a laboratory test for this, but bioremediation has not been proven successful in treating

persistent, low volatility contaminants such as dioxins/furans which are distributed across the upland property.

Disruption to the Community—Concerns of disruption as a result of cleanup activities fell into two categories: removal/disruption to the ecosystem and disruption to communities. DEQ replied that implementation of the cleanup will cause temporary disruption to both the ecosystem and communities, however contamination at the site is currently uncontrolled and poses a risk to humans and plants and animals until a cleanup is implemented.

Access/Future Use—The majority of comments stressed the importance of unlimited human access, including preferences for potential future uses of the site ranging from intensive park use to preservation as a nature park with only limited public access. DEQ emphasized that the selected cleanup will allow for access to the entire upland site, on and off trails, in accordance with Metro’s proposed future use.

Houseless Community—Comments were concerned about displacement and risk assessment calculations. DEQ replied that the site poses unacceptable risk to all human uses as a result of soil contamination and decisions regarding how the site is managed will be decided by Metro. DEQ toxicologists have been involved in a comprehensive risk assessment and soil cleanup levels are driven by a recreational user driven by routine exposure starting as a child and occurring for up to 26 years.

Pace to Cleanup—Several comments requested a rapid cleanup. DEQ responded that in terms of scheduling, following this Record of Decision DEQ will enter into a legal agreement with the Metro and the Port of Portland to conduct the cleanup, and timing is also tied to the Portland Harbor in-water and riverbank work in terms of sequencing and construction logistics.

DEQ also reached out to several tribes, including the Confederated Tribes of Grand Ronde, Nez Perce Tribe, Confederated Tribes of Siletz Indians, Confederated Tribes of Umatilla Indian Reservation, Confederated Tribes of Warm Springs, and Confederated Tribes and Bands of the Yakama Nation. Five of the tribes submitted comments during the open comment period, which are included in the ROD. The Yakama Nation did not provide comment during the six-month comment period.

Financial Implications: DEQ assembles cost estimate tables as part of ROD development and for thorough balancing-factor analysis of possible remedies. Detailed cost estimates for each examined remedy are included in the Record of Decision.

These projected costs are based on 2019 estimates and include a +50% or -30% estimation factor. Additionally, while not included in the estimate tables, the text of the DEQ ROD indicates that the March 2020 Staff Report and the ROD Table 14 and Table 15 did not account for the 1-foot topsoil cover, which purchase and placement is estimated to add \$1.3 million to either of those remedies.

Staff do not have information at this time of the possible financial implications of implementing the contingency remedy. Staff can research and develop that information should Council desire.

Following the Record of Decision, Metro and the Port of Portland will engage in Remedial Design sampling, which will allow for greater cost certainty as we better understand the full extent of contamination, particularly vertical extent. Staff can return to Council at such time with additional information if it would be useful. The availability of any 2019 Parks and Nature bond money for this project, if any, is yet to be determined.

ATTACHMENTS

- A. Council Resolution 20-5149 for reference
- B. DEQ Record of Decision March 2021

For work session:

- Is legislation required for Council action? ☐ Yes ☒ No
- If yes, is draft legislation attached? ☐ Yes ☒ No