



Port of Portland Testimony – Support for SB 412A
House Committee on Energy & Environment
May 20, 2015– SB 412A

Thank you for the opportunity to provide comments in support of SB 412A. The bill would declare dredging by Oregon’s port districts to be a “productive use.” This legislative declaration would have a minor, but important, effect in the complex regulatory regime that applies to all port dredging operations in this state’s waters.

The Department of Environmental Quality (DEQ) considers material excavated by dredging operations to be a “solid waste,” despite the essential economic role these operations play, and the inherent utility of the materials they produce. The Legislature has mandated the reuse of waste materials wherever possible, and reduction of the stream of materials going to landfills. ORS 459.015(1). SB 412 supports these goals.

As DEQ explained in the May 19 hearing, waste materials may be used, rather than sent to a landfill, if DEQ concludes that the material in question (a) has a productive use and (b) will not create an adverse impact to human health or the environment. The material must have been sampled and tested sufficiently to allow DEQ to make these determinations. *SB 412 would change only the first of these elements*, by declaring that upland placement of dredged materials is productive. This means that port districts would not have to demonstrate additional uses and provide a timeframe for use of the dredged material, such as construction fill, erosion control, or habitat creation. But ports would still have to characterize the material and demonstrate to DEQ’s satisfaction that no adverse impact to human health or the environment will result. Furthermore, the public process associated with case-specific reviews of dredging operations will remain unaffected.

In many cases port districts will have additional uses in mind when dredging is planned (such as construction fill), and will inform DEQ of that fact. But in other cases ports have no immediate need for, or plan to use, dredged material, and therefore they place the material at upland locations indefinitely. This can be accomplished with no adverse impact to human health or the environment. Upland placement of dredged material can have significant positive environmental effects: dredged material sites on the lower Columbia River, formed in the process of maintaining the main shipping channel, now provide critical vital habitat to the ESA-listed Streaked horned lark.

Much of the opposition testimony at the hearing on May 19 concerned the Port of Portland's dredged material management area (DMMA) on West Hayden Island (WHI). We offer these few brief points in response:

SB 412 will not allow port districts to create "ad hoc dumps" anywhere they please. As noted above, any upland placement location must first be described in the federal and state permitting process, and compatibility with local land use law must be demonstrated. Upland placement at any given location must meet the DEQ requirement that there be no adverse effect on human health and the environment.

SB 412 will not allow the deposit of materials that are "toxic" to human health and the environment. DEQ's case-specific review of dredged materials must establish that any contamination in those materials will not cause harm, whether to the waters of the state, to nearby residents (by blowing dust or other types of contact), or to wildlife that might interact with the material. SB 412 will not change that review process.

SB 412 would not affect the public's right to review and comment, as it currently exists in state and federal laws that govern dredging operations, including the beneficial reuse rules addressed by this bill.

SB 412 would not affect how the state and federal Superfund laws apply to contaminated sediment, and the procedures that will apply to cleanup of Superfund sites, such as the Lower Willamette Harbor.

Some of the testimony offered in opposition to SB 412 has mentioned the Port of Portland's existing dredged material management area (DMMA) on West Hayden Island. While SB 412 does not have any special application to the Port of Portland or this placement site, we offer the following points in response:

The current DMMA is approximately 100 acres in size. Dredged material has been placed at this location for approximately 80 years or longer. Indeed, much of WHI itself consists of dredged material deposited there over the course of the last century. Following the Spring floods of 1996, over a million cubic yards of material was placed in the DMMA in a major dredging effort to maintain the Columbia shipping channel.

The Port of Portland purchased WHI in 1994. The approximately 800-acre site (which includes the DMMA) has been designated by Metro for both open space and marine terminal development. Although the Port withdrew from the most recent attempt to annex the property into the City of Portland, the Port continues to plan for marine development on some portion of the property at some point in the future. This site must be provided to the US Army Corps of Engineers as the Port of Portland's Non-Federal Sponsor obligations. As such, the Corps has obtained authorizations from US Fish and Wildlife and NOAA Fisheries. These authorizations at this site are in addition to state and federal permits obtained by the Port of Portland.