

BRADWOOD PROJECT
DECLARATION OF COOPERATION
April 10, 2003

I. Background.

In its effort to stimulate greater beneficial use of material from maintenance dredging on the lower Columbia, the Lower Columbia Solutions Group has targeted the Bradwood Project as a near-term opportunity for beneficial use of dredged material. Work on the Bradwood site, it is hoped, will result in resolution of regulatory and other business-related issues that may also be instructive for other future beneficial sites.

A collaborative process was set up through Oregon Solutions to work on the Bradwood project, with State Representative Betsy Johnson appointed by Oregon's Governor to convene the process. Partners include: the Oregon Community Solutions Team, Ken Leahy Construction, Port of Astoria, Port of Portland, Clatsop County, Oregon Division of State Lands, U.S. Army Corps of Engineers, City of Astoria, ODOT Rail, Portland and Western Railroad, Columbia Riverkeeper, and the Columbia River Estuary Study Taskforce. The Group Facilitator is Steve Greenwood.

II. Project Description.

- The Bradwood site is a 50-acre marine industrial site in Clatsop County, owned by Ken Leahy Construction. A Portland and Western rail line connects the property to Astoria, the Portland metro area, and – through connections with other rail lines – beyond. Leahy wishes to have dredged material pumped to the site, then loaded on rail cars for transportation to markets.
- 275,000 cubic yards were pumped on to the site last year by the dredge “Oregon” in a specific one-time dredging project. Sand meets the specs for mason sand, though probably not concrete.
- Leahy projected a 10-year program, with average minimum 250,000 cubic yards per year, based upon historic dredge volumes in the vicinity.
- Although the Corps of Engineers currently feel they already have “adequate (in-channel and other) disposal capacity” in the specific area, dredged material management options in the lower Columbia have become more limited, and the concern is that they could be even more limited in the future.

III. Oregon Solutions Process Objectives.

- a. The Bradwood site, with its rail access, zoning and planning approval, and an interested and knowledgeable site owner/developer represents a unique near-term opportunity for increasing the beneficial use of maintenance dredging material from the lower Columbia. The primary objective was to bring together key parties that represent the private developer, regulatory agencies, transportation interests and economic development interests to support development of (and maximize community benefits from) this opportunity.
- b. To identify key site-specific issues for development of the Bradwood site as a beneficial use “depot” for dredged material. Though site-specific, many of these issues may be generalized to develop other beneficial use sites on the lower Columbia.
- c. To set in motion a coordinated process for resolving regulatory/permitting issues at the Bradwood site, providing a successful model (and developing relationships) for other beneficial use sites on the lower Columbia.
- d. To utilize Bradwood as a specific example to help clarify how the U.S. Army Corps of Engineers will implement their beneficial use policy in the lower Columbia.

IV. First Steps:

- a. Bradwood team members identified a wide range of questions and issues that needed to be addressed. Some of those issues are most appropriately addressed by the project owner, Ken Leahy Construction in the development of its business plan. Others, such as marketing issues, may be best addressed by the Lower Columbia Solutions Group, as they have broader application to all beneficial use sites on the Columbia. Those that were addressed by some or all of the parties to the Bradwood Project Oregon Solutions process are outlined below.
- b. Bradwood Project partners in the Oregon Solutions process committed to the following “groundrules” for how they conducted their business with one another in this collaborative process:
 - “We recognize that the best solution depends upon cooperation by all entities at the table.”

- “We recognize that each party has a unique perspective and contribution to make, and legitimate interests that need to be taken into account in the solution.”
 - “We commit to openly expressing our ideas, potential contributions, and our concerns: no holding our cards close to the vest.”
 - “We are willing to creatively explore potential mutual benefits and solutions: not simply settling on the first apparent answer.”
 - “Everyone shares in the solution, everyone shares in the credit.”
- c. A regulatory/institutional sub-group has met and identified the various regulatory processes or permits that may be involved in full development of the Bradwood project. (See attachment A)

V. Outcomes.

a. Business Plan Development

Ken Leahy Construction is currently revising the business plan. Considerable testing has been done of the material currently at Bradwood (as well as several miles upstream). The material does not, as was hoped, meet the specifications for concrete mix. Therefore, the current market price for the material is \$6.50 - \$7.50 per ton. Given the cost of rail transport (up to \$3.50 per ton), the current economic feasibility of this site as a beneficial use “depot” is limited. Ken Leahy Construction is committed to continue marketing the sand currently at the site, and to move ahead with developing a business plan and permitting applications as economic conditions change.

b. Clarifying the Corps’ Beneficial Use Policy

A meeting with the Corps and the Port of Portland resulted in clarification of the Corps’ beneficial use policy: for commercial uses (like that envisioned at Bradwood), all incremental costs above in-river disposal will be borne entirely by the project sponsor. (*See Attachment B)

c. Review of Regulatory Issues and Processes

A regulatory sub-group has met, and has outlined the various regulatory and permitting issues and processes (Attachment A). An assessment of the wetlands value and mitigation needs is being prepared by Leahy Construction for submittal to the Corps and DSL. Once official application is made, these agencies are prepared to initiate a meeting with DEQ, Clatsop County Planning, and other appropriate regulatory agencies, to coordinate regulatory and permitting processes.

d. Investigate Current and Potential markets

Because additional testing (completed after the start of this process) showed that the material does not meet specs for concrete, the remaining market is for construction and golf course fill, masonry sand, and asphalt. (See above) Ken Leahy construction will continue to investigate markets for this material, and it is expected that the Lower Columbia Solutions Group may address marketing on a broader geographic scale.

e. Identify rail or other transportation issues

Ken Leahy Construction met with ODOT Rail and Portland and Western Railroad representatives on the Bradwood team. Improvements to the rail line were completed in March 2003, and upgrade the line to 25 MPH all the way to Astoria, with an 80-ton limit. Current per-unit costs to Bradwood are high, and will be reduced as the volume of rail traffic increases. Plans are set for regular freight service to Wauna, though the highest potential for additional traffic appears to be at Tongue Point. (*See Attachment C). The Bradwood team urges the Lower Columbia Solutions Group, in collaboration with the Congressional delegation, to monitor and address the long-term needs for upgrading the rail line.

f. Lesson Learned, for the Lower Columbia Solutions Group

Over the four months of deliberation, the Bradwood Project Collaborative Partners have identified a number of lessons learned for the larger lower Columbia Solutions effort. (*See Attachment D)

VI. Signees to this Declaration of Cooperation.

This Declaration of Cooperation, while not a binding legal contract, is evidence to and a statement of the good faith and commitment of the undersigned parties.

Rep. Betsy Johnson, Convener

Ken Leahy Construction

C.R.E.S.T.

U.S. Army Corps of Engineers

Clatsop County

Portland & Western Railroad

Port of Portland

Oregon DEQ

Columbia Riverkeeper

ODOT Rail

Oregon Div. of State Lands

ATTACHMENT A

BRADWOOD – REGULATORY CONSIDERATIONS

1. Planning/Zoning

Zoning	Clatsop County	Received approval as a permitted use (Marine Industrial)
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Review of Wetland fill Permit (and Other permits) For land use Goals	DLCD	Goal 5 review needed: (protection of natural resource areas)
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<u>Dredge-Fill Permit</u>	USCOE	Permit needed.
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Requirements include:

- Public notice – 30 days
- ESA review
- Cultural-Historical Resource
- Review
- Alternatives analysis
- Mitigation?
- DEQ WQ certification

2. <u>Section 10 Permit</u>	USCOE	Needed if improving docks
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4. <u>ESA Consultation</u>	NOAA Fisheries	Consultation on wetland permit for Endangered Species (salmon) Can be formal or informal
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| | | Sump will be significant issue |
| 5. <u>Water Quality Cert.</u> | Oregon DEQ | Already have 401 for upland disposal |
| | | Other state agencies (ODFW) have opportunity to comment |
| | | Dewatering (return water) an issue. Settling ponds may be needed. |
| 6. <u>Solid Waste Letter of Authorization</u> | DEQ | Either a SWLA or a permit Exemption is need for upland placement of sediment. Exemption is warranted if material is “clean fill”. |
| 7. <u>Sand and Gravel Permit</u> | Oregon DSL | |
| 8. <u>Oregon Fill Permit</u> | Oregon DSL | To fill wetlands, parallels COE process |
| 9. <u>Waterway Lease</u> | Oregon DSL | Needed for reconstruction of docks |
| 10. <u>Other Regulatory Issues/Questions explored:</u> | | |
| <ul style="list-style-type: none"> • Part of wetland fill permit process will be to look at non-wetland fill opportunities on site • Does DOGAMI need to be involved? (Answer: NO) • Would DEQ tax credits be available for private investments resulting in a “less turbid” alternative? (Answer: POTENTIALLY) • Is there a need for a stormwater/erosion control permit through either DEQ or DOGAMI? (answer: NO, DEQ CONCERNS ADDRESSED THROUGH WATER QUALITY CERTIFICATION) | | |

- Water Quality Certification for filling of wetlands may be easier if the currently permitted dredged material is used for fill (as there will be no de-watering).
- Development of a sump in the side channel off the Bradwood site may involve a relatively complex and lengthy regulatory process. The Corps has indicated that they would not take the lead on this and that the site owner would need to conduct the necessary environmental studies, etc. The Corps has said it would be willing to pursue “flow lane disposal” of hopper dredge material at the Bradwood site.

ATTACHMENT B

BRADWOOD PROJECT USCOE BENEFICIAL USE POLICY

1. Corps policy on Beneficial Use of dredged material is a 1987 document, currently being revised and updated. No substantive change in the policy is expected.
2. The policy is based upon the principle of selecting the “lowest cost, environmentally acceptable” option. Along with that principle, however, is a national encouragement for using dredged sands beneficially.
3. The policy varies depending upon the beneficial use.
 - a. In public uses, such as wetlands construction, the incremental cost above “lowest cost” (in-channel disposal), is shared by the Corps and the project sponsor.
 - b. For commercial uses (such as at Bradwood), the entire incremental cost above lowest cost (in-channel disposal) is borne by the project sponsor or parties other than the Corps.
4. Included among the “incremental” costs that would need to be borne by the project sponsor (for commercial uses) are:
 - i. The cost of pumping a longer distance than the nearest in-channel disposal area (for the suction dredge).
 - ii. The cost of constructing any sump
 - iii. The added cost of transporting the material on a hopper dredge if the distance is greater than to the nearest in-channel disposal site.
 - iv. Any costs associated with pumping from a sump to an upland site.
 - v. Any permitting or regulatory costs associated with the beneficial use.
5. Anyone wanting to utilize dredged sands for commercial purposes should contact the Corps offices (Jon Gornick, 503-808-4341) to discuss planned dredge sites, potential incremental costs, and their calculation.

6. The Corps believes that the historical amounts dredged in the vicinity of Bradwood will likely be declining over time. Therefore the long-term viability of Bradwood as a re-use site will be highly dependent upon the market for sand, and increases in price for dredged sand, in particular.

ATTACHMENT C

Bradwood Project Rail Transportation

Condition of the track:

- By mid-March upgrading of the track will be complete, all the way to Astoria, making the rail line Class II, suitable for 25 MPH speeds.
- Even with the upgrade, the track cannot currently take “real heavy loading” so loads will be limited to 80 tons per car.
- ODOT is concerned about heavy rail on the tracks in next 3 years because of the excursion train, so they support the 80-ton limit.
- Congressman Wu’s office has said that Wu will continue to seek appropriations to further upgrade the line.

Cost and Use:

- Leahy Construction is currently in negotiation with Portland and Western Railroad over the terms of rail service to Hillsboro from the Bradwood site.
- Current unit cost for rail shipment of dredged material is quite high (up to \$3.50 per ton), and even at that rate, economics will only support a minimum shipment of 10-12 cars per day, three days a week.
- Ultimate freight rate for Bradwood site will depend upon total # of cars, including cars for other uses. Rail service will begin to Wauna (with rates already set by contract) very soon, which will help lower rates to Bradwood. In addition, there is reportedly serious interest in land for sale at Tongue Point from a potential rail user.
- Any loading at the Bradwood site (or other main line sites) will require either construction of a spur line, additional flagging, or other safety measures to be negotiated with the Portland and Western Railroad.

- According to ODOT, a “long term commitment” on the part of a shipper may make the shipper eligible for business loans.

ATTACHMENT D

March 27, 2003

To: The Lower Columbia Solutions Group

From: The Bradwood Project Collaborative Partners, Convener Rep. Betsy Johnson

Re: Lessons Learned

The Lower Columbia Solutions Group asked that we form a collaborative effort to work on developing the Bradwood Site in Clatsop County as a Re-Use site for Maintenance Dredging material. While the Bradwood site offered a near-term opportunity, based upon a willing developer (Ken Leahy Construction), it also offered an opportunity to apply any lessons learned to the larger lower Columbia effort you are engaged in.

Over the course of the past 4 months, the Bradwood Project Collaborative Partners have met 3 times, and those have been augmented by smaller sub-group meetings. The bottom line is that the Bradwood site may not be the *near term* opportunity for beneficial use of dredged material (beyond what is already at the site) that was hoped.

However, because of the work by the Bradwood collaborative team, we are well-positioned to develop that opportunity, should economic conditions change. We further believe that the following “lessons learned” from the group’s work may be helpful to you:

- The commercial market (and price) for dredged sands is affected by the quality of those sands. Considerable work done to test the quality of sands in the Columbia near Bradwood (paid for by Ken Leahy Construction) have revealed:
 - The quality/value (proportionate to coarseness) of the sands increases as you go upstream in the lower Columbia.
 - Sands dredged in and near the Bradwood area (and as far upstream as Jones Beach) do not meet the specs for concrete, which would have substantially increased their value.

- Those sands *downstream* from Puget Island (and Bradwood) begin to be contaminated with salt, which greatly reduces their value for construction purposes.
- The economics of commercially using dredged sands is also dependent upon the availability of alternative “lowest cost” disposal sites in the lower Columbia, under the current Beneficial Use policy of the U.S. Army Corps of Engineers.
 - If there are in-water disposal options closer (than upland beneficial use sites) to dredging operations, there is an “incremental cost” of getting that material to the upland site for beneficial use.
 - That incremental cost is borne 100% by the commercial user/sponsor under the USACE beneficial use policy.
 - The previous piping of material to the Bradwood site was greatly facilitated by the use of the suction dredge (Oregon) on a shoal very close to the Bradwood site, involving no incremental costs. *This will be a rare occurrence at the Bradwood location.*
- Rail access to any site will be an advantage. The Portland and Western Railroad between Portland and Astoria has now been upgraded from 10MPH to 25 MPH its entire length.
 - There will be an 80-ton limit to reduce damage to the line from heavy loads. Long term, there will be a need to further upgrade the line. Congressman Wu’s office is aware of this need.
 - As rail freight traffic increases (i.e. new users contract for service) on the Portland and Western line, the unit cost of transportation at Bradwood will decrease, making operations there more economically feasible.
 - Any loading at the Bradwood site (or other main line sites) will require either construction of a spur line, additional flagging, or other safety measures to be negotiated with the Portland and Western Railroad.
- Regulatory coordination will help facilitate the beneficial use of dredged material.
 - The Oregon Community Solutions Team has been very helpful in providing a forum for regulatory coordination.
 - All of the regulatory agencies have severe workload concerns, and so time devoted to coordination on beneficial use sites must be used

selectively. The Corps of Engineers, for example, has a standing policy of not meeting with applicants unless there is an official application submitted.

- The Bradwood regulatory sub-group has provided a list of the regulatory and permitting requirements for the Bradwood site to the LCSG committee working on regulatory issues.
- Encouraging commercial use of dredged material inherently raises questions about the proper public role in activities where private investment and profit is at stake.
 - Some activities, such as business planning, site-specific marketing, and rate negotiations are outside the purview of public agencies and the “public interest”.
 - For other activities, such as regulatory coordination or clarification of beneficial use “policies”, we agreed that those activities, or the results of those activities, should be available to *any* party proposing beneficial use.
 - The economic viability of a beneficial use project is primarily a function of supply and demand. The best use of future “Bradwood-type” sub-groups may be to address the *institutional* barriers or issues once a private party has determined that an investment “pencils-out”.