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**Via US Mail and Email**

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**Re: Portland Golf Club Dredging Project**  
Our File No.: POR98.2

Dear Director Feldon, Ms. O'Brien, Mr. Fleming, and Mr. Vrooman,

My office represents Portland Golf Club ("PGC"). As Ms. O'Brien, Mr. Fleming, and Mr. Vrooman are aware, PGC is planning to dredge a private reservoir on its property located at 5900 SW Scholls Ferry Rd, in Portland, Oregon. My office voluntarily initiated communication with the Oregon Department of Environmental Quality ("DEQ") on December 30, 2024, in a good faith attempt to confirm that no solid waste permitting or authorization will be needed for the project. Unfortunately, the responses we have received from DEQ have been inconsistent and untimely. As such, we are writing to state PGC's position regarding its dredging project and its handling of the dredged sediment. Please respond in writing by March 3, 2026 so that we may finally receive DEQ's formal position. Otherwise, PGC will interpret DEQ's continued silence as its concurrence that no solid waste permitting or authorization is required for PGC's project. PGC is also willing to meet with DEQ to further discuss this project prior to March 3, 2026, if doing so will be helpful to DEQ in rendering a prompt written response to this request.



### Characteristics of the Dredged Sediment

We have discussed with Ms. O'Brien, Mr. Fleming, and Mr. Vrooman previously that the sediment dredged from the reservoir will include an unknown number of golf balls that have been hit into the reservoir by golf players over the years. Additionally, we have discussed that sediment sampling shows individual samples with very slightly elevated levels for copper, lead, and zinc above DEQ's guidance/policy for clean fill screening value levels ("SVLs"). However, all test results for copper, lead, and zinc are below risk-based concentrations. The low concentrations of copper, lead, and zinc in the sediment present no risk. The results from the sediment testing are summarized in the table below:

Metal	Average	SVL	Notes
Zinc	165 mg/kg*	180 mg/kg	The averaged value is below the SVL, and all samples from the reservoir were below the measured levels from upstream sources at the location of inflow to the reservoir.
Lead	34.6 mg/kg*	28 mg/kg	The averaged value is below the Portland Basin background level for anthropogenic contributions, which is 79 mg/kg.
Copper	43.8 mg/kg*	34 mg/kg	The averaged value is a mere 9 mg/kg above the SVL, and DEQ has granted exemptions from permitting for far higher exceedances (see next section).

\* Oregon State University Soil Health Laboratory Soil Health Analysis Report, March 23, 2021. Additional testing reveals similar results from limited samples.

### Background of Communications with DEQ

We sent a letter to DEQ dated March 11, 2025, expressing PGC's willingness to remove the golf balls from the sediment, though such golf balls are inert. Given only a very minor SVL exceedance for copper when the samples were averaged (see above), we opined that once PGC removes the golf balls from the sediment, the sediment will be "substantially the same as 'clean fill'" (OAR 340-093-0080(2)), thus requiring no solid waste permitting. Ms. O'Brien responded quickly in that instance, sending an email dated March 13, 2025, which concluded, "The sediment contains contaminants that exceed the clean fill screening criteria. Removing the golf balls and disposing of the balls at a DEQ permitted landfill authorized to receive this waste would not be sufficient to allow contaminated soil to remain



on the golf club property without a solid waste letter authorization.”<sup>1</sup> Ms. O’Brien invited us to meet with Mr. Vrooman, which we did on March 19, 2025. However, DEQ continued to assert that a solid waste letter authorization would be required, unless PGC could establish reason for issuance of a beneficial use determination.

Despite clear qualification for an exemption under OAR 340-093-0080(2), PGC chose a path of less resistance in order to move forward with its project in a timely manner. After determination that a beneficial use determination will not be feasible, we informed DEQ by email on March 31, 2025 that PGC will dispose of the dredged sediment in a landfill, and, as such, there will be no onsite disposal, and PGC will not need to apply for a permit or authorization. We received no response from DEQ at that time, and believed our conferral on the subject of solid waste permitting to be complete. As such, PGC also modified its removal-fill applications that were then pending before the Oregon Department of State Lands and the U.S. Army Corps of Engineers to reflect PGC’s intent to dispose of the dredged sediment in a landfill. That decision was based on our communications with DEQ.

Approximately six months later, Mr. Fleming sent us an email dated September 19, 2025, stating that DEQ had reviewed PGC’s Joint Permit Application materials submitted to DEQ related to its 401 Certification process (which materials DEQ received on December 12, 2024, nine months earlier). Although no time period for dewatering was ever previously discussed with Mr. Fleming, he somehow had the impression that the process would take 2-3 months, and requested justification for a longer dewatering period stated in the Joint Permit Application. Mr. Fleming suggested that PGC use a flocculant to speed up dewatering, but such a practice will not be feasible for the project because return water is needed to keep the dredge afloat. Mr. Fleming also informed PGC, “DEQ can allow for temporary storage of the sediment to allow for active de-watering (without issuing a solid waste permit) but will require a solid waste permit for storage of the sediment past a recognized de-watering period, or if the storage onsite for de-watering is proposed to take more than 6 months.”

We requested support for Mr. Fleming’s assertion that solid waste permitting would be needed if dewatering took more than six months. In response, Ms. O’Brien sent us an email dated September 29, 2025, attaching what she described as “criteria that DEQ uses to allow for temporary storage without requiring a solid waste permit.” The policy memo Ms. O’Brien

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<sup>1</sup> It is worthy of note that DEQ’s rejection of any discussion regarding permit exemption for the very slight copper exceedance is contrary to DEQ’s past policy and practice in issuing exemptions for other projects. For example, see exemptions issued to the following entities, finding that despite exceedances of SVLs, the sediment was substantially the same as clean fill and could be disposed of as clean fill: City of Hillsboro Public Works Department, February 10, 2021 & March 10, 2021 (Huffman Street Extension); Oregon Department of Transportation, July 28, 2016 (US-26 NW Cornelius Pass Road); The Ridge at South Copper Mountain, March 29, 2018 (NE of the intersection of SW Scholls Ferry Rd & SW Tile Flat Rd).



attached is titled Solid Waste Storage and Speculative Accumulation, and is enclosed with this letter. Ms. O'Brien also advised, "DEQ can allow storage of waste for a period of less than six months without requiring a solid waste permit." She concluded with the following statement: "By October 10, 2025, please provide additional information documenting that the sediment will be removed and disposed at a DEQ permitted landfill within 6 months of dredging or apply for a SWLA." We responded timely to Ms. O'Brien's request, advising DEQ by email on October 10, 2025, "PGC will time its project to ensure the sediment is removed before six months. It will not apply for a permit."

Again, we believed our conferral on the issue of solid waste permitting to be complete. We expressed PGC's willingness to comply with the instructions expressly provided by two of DEQ's employees in writing, specifically, that the dredged sediment may be placed onsite for dewatering for no more than six months prior to disposal in a landfill without the need for permitting or authorization. Despite this clear instruction from DEQ and equally clear response from PGC, DEQ then began providing conflicting information to Washington County, which has unnecessarily delayed and complicated PGC's land use authorizations and other permitting for its project.

On October 7, 2025, Ms. O'Brien sent an email to Carol Johnson at Washington County, advising her, "DEQ considers that a solid waste letter authorization permit application is needed for storage of the sediment/golf balls on site for the length of time proposed." Ms. O'Brien's email preceded the deadline she gave PGC to respond regarding disposal of the dredged sediment at a landfill within six months. As such, upon learning of Ms. O'Brien's email to Ms. Johnson, we followed up with Ms. O'Brien by email on October 15, 2025, asking her to clarify for the County what she and Mr. Fleming previously advised – that no permitting, including any solid waste letter authorization, is needed if PGC disposes of the dredged sediment in a landfill within six months of dredging. We expected a response consistent with what she and Mr. Fleming previously advised in writing, but Ms. O'Brien instead responded with a new, conflicting opinion on October 22, 2025, stating, "DEQ has reassessed and requests that prior to any storage of solid waste on the property that Portland Golf Club apply for a solid waste letter authorization." Since Ms. O'Brien's statement reversed her prior instruction, we requested clarification the same day. Ms. O'Brien then responded as follows:

"In no way should Portland Golf Club be interpreting state law as saying storage of solid waste is allowed for up to six months without a solid waste permit... As communicated in earlier emails, DEQ perhaps mistakenly understood that dewatering would be accomplished in a 2-3 month time period. As that is not the actual case, DEQ requests that Portland Golf Club apply for a solid waste letter authorization that clearly identifies what is proposed for management of the sediment and golf balls until the solid waste is disposed at a DEQ permitted landfill authorized to receive that waste. Portland Golf Club may also send the solid waste directly to a DEQ permitted



landfill such as Hillsboro Landfill which has the ability to dewater the sediment and golf balls and dispose that waste within the landfill.”

To our reading, Ms. O’Brien’s email expresses two additional conflicting positions on behalf of DEQ: 1) that if the dewatering and offsite disposal can occur in a 2-3 month time period, then no permit or authorization will be needed; and 2) that solid waste permitting or authorization is needed if the sediment is not disposed of “directly” upon dredging (meaning, we assume, no placement/accumulation of the sediment is permitted onsite at all prior to offsite disposal in a landfill).

Ms. O’Brien again invited us to discuss the matter with Mr. Vrooman, which we did on November 4, 2025. At our meeting with Mr. Vrooman, we explained the differing instructions we received from DEQ to date that are outlined above. We also explained the adverse impact DEQ’s conflicting assertions were having on Washington County’s land use authorization, as well as resulting in issuance of a DEQ warning letter related to 401 Certification. We requested that Mr. Vrooman obtain clear direction from DEQ on these issues, which Mr. Vrooman agreed to do. However, over three months later, we have received no substantive response from DEQ. We followed up with DEQ and Mr. Vrooman numerous times. Ms. O’Brien last committed to provide PGC with a response by January 16, 2026, but no response was received by that date. On January 29, 2026, Ms. O’Brien responded, only to suggest that PGC meet with DEQ and Washington County “to identify possible options.”

From PGC’s perspective, DEQ needs to provide a clear answer about whether offsite disposal of the sediment, following dewatering for a period not to exceed six months, is indeed permissible without a solid waste permit or letter authorization under State law, as DEQ already answered in the affirmative. DEQ’s standard for answering this question is totally independent of any decisions Washington County has made/will make with regard to local land use approvals. DEQ’s solid waste permitting program is governed by ORS Chapter 459, OAR Chapter 340 Division 93, and DEQ’s policies and guidance. Washington County’s land use authorizations, on the other hand, are governed by Washington County’s Community Development Code and Washington County’s Code of Ordinances. The inquiries before DEQ and Washington County, and the legal standards applicable to each, are not the same. As such, while PGC already met with DEQ and Washington County, and is willing to have further conversations with each entity as needed to move this project to completion, it is not appropriate for DEQ to base its state permitting decisions on Washington County’s land use approval criteria, and vice versa. The two issues have been mistakenly conflated by the entities, and separation is needed at this time to apply the correct legal standards to the two distinct issues. Thus, PGC will address local land use issues with Washington County separately from its state permitting inquiry.



### **Required Conclusions & PGC's Position**

PGC has committed to disposing of the dredged sediment from its project at a landfill. As such, no "disposal" of the sediment will occur onsite, and no solid waste disposal permitting or authorization is necessary or required by Oregon law.

Moreover, the activities proposed by PGC's project are consistent with prior DEQ authorizations. DEQ has approved solid waste permitting exemptions in many other circumstances where the SVL exceedances for material being disposed of far exceeded the constituent SVL exceedances at issue for this project. Rather than push the issue of qualification for exemption, PGC agreed to voluntarily dispose of the dredged sediment at an offsite landfill, in the time period set forth by DEQ.

As such, PGC's position is as follows:

1. PGC is willing to submit an application for exemption from solid waste permitting, as we believe PGC is entitled to issuance of the exemption; or
2. PGC is willing to dispose of the dredged sediment in a landfill within six months of dredging to allow for dewatering.

Under Oregon law, neither of the above options require solid waste permitting or a solid waste letter authorization.

As requested above, please respond in writing by March 3, 2026 with DEQ's concurrence or disagreement with PGC's position. Otherwise, given other application and project deadlines, PGC must interpret any continued lack of substantive response from DEQ as DEQ's concurrence with PGC's position, and PGC will move forward to dewater the sediment onsite, and then dispose of the sediment in a landfill within six months of dredging. PGC remains willing to meet with DEQ prior to March 3, 2026 to discuss its project and the options for its project that are outlined above in this letter.

Best regards,

Sarah Liljefelt

SRL1:wms

Enclosure

cc: Client; Jeffrey Hunter, Perkins Coie; Carol Johnson, Washington County (via email only)

# Directive



State of Oregon  
Department of  
Environmental  
Quality

Title: <b>Solid Waste Storage and Speculative Accumulation</b>		<b>Form C</b>
Original Approved: Mary Wahl April 1995	Reviewed by: Bob Barrows	Pages: 1
Approval: Wendy Wiles, Land Quality Division Administrator		
Signature: <i>Wendy Wiles</i>	Date: 2/6/08	

## Purpose/Need:

The purpose of this Directive is to provide Solid Waste staff with uniform parameters within which the accumulation of solid waste may be regulated.

## Legal Authority:

Terms used in this Procedure have the meaning given in OAR Chapter 340 Division 93-97.

## Directive:

In March, 1982, the EQC agreed that the Department could regulate the storage of solid waste (as a disposal site) in the following cases:

- the waste has been stored for more than six months; and
- there is no "clear evidence" the wastes will be used productively or
- the waste constitutes, in the Department's opinion, a potential environmental problem.

## Procedure:

After six months, a storage pile is considered to be a "disposal site" and is regulated accordingly.

## Exemptions:

A storage pile in existence for more than six months may be exempted from regulation as a disposal site only if the following criteria apply:

- The material stored is potentially recyclable and has a feasible means of being recycled, and,
- During the calendar year, the amount of material recycled equals at least 75 percent, by weight or volume, of the amount of material accumulated at the beginning of the calendar year.