

**Port of Portland****PERMIT AND RIGHT OF ENTRY**

Permit Number: 11-486

PERMITTEE:

City of Portland - Bureau of Planning and
Sustainability
1900 SW 4th Avenue
Portland, OR 97201
Contact: Mindy Brooks
WHI Natural Resources Inventory Manager
Phone: (503) 823-7831
Email: mindy.brooks@portlandoregon.gov

PORT CONTACT:

Port of Portland
Property and Development Services
7200 NE Airport Way
Portland, OR 97218
Contact: Patti Freeman
Contracts Administrator
Phone: (503) 415-6048
Email: patti.freeman@portofportland.com

RECITALS

A. The Port of Portland, a port district of the State of Oregon (the "Port") is the owner of certain real property located north of the City of Portland in the Columbia River, Multnomah County, Oregon, more commonly known as West Hayden Island ("WHI") as further described in Section 2 below.

B. The City of Portland, Oregon ("City") and the Port have entered into an Intergovernmental Agreement West Hayden Island (WHI) Land Use Approvals Work Program and Tasks dated May 29, 2009 as amended by Amendment No. 1 dated June 14, 2010 and as further amended by Amendment No. 2 dated October 11, 2010 ("Phase II"), for the potential annexation of WHI into the City limits.

C. The first steps of Phase II are development of the studies that will inform conceptual designs, and the Hayden Island Natural Resources Inventory ("HINRI") study is one of the first studies to be completed. The City now desires access to WHI for the purpose of completing the HINRI study as further described below.

NOW, THEREFORE, in consideration of the promises and covenants contained in this Permit and Right of Entry (this "Permit") and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. GRANT OF PERMIT

The Port hereby grants to Permittee the nonexclusive right to enter upon and use the Premises (defined below) in accordance with the terms and conditions set forth below.

2. PREMISES

The "Premises" shall consist of approximately eight hundred (800) undeveloped acres located near the confluence of the Willamette and Columbia Rivers, commonly known as West Hayden Island and as more precisely shown on **Exhibit A** attached to this Permit.

3. PERMITTED USES

The Port hereby grants to the City and its employees the non-exclusive right to enter upon the Premises for the purposes of mapping natural resource features, ranking riparian corridor and wildlife functions, vegetation sampling, seine fishing for the purpose of fish identification and counting, and designating Special Habitat Areas, (collectively "Permitted Uses"), all of which are described in the Work Scope attached hereto as **Exhibit B**. The City shall use the Premises solely for the Permitted Uses. City shall obtain the Port's prior written approval for any desired changes to the Work Scope.

4. SPECIAL CONDITIONS

4.1 Work Activity and Equipment

The City acknowledges that the Premises contains natural resources and are adjacent to waterways. Therefore, the City shall strictly adhere to all terms and conditions of this Permit, including without limitation the conditions described in this Section 4 and in Section 13. In order to protect the water and soil resources and wildlife habitat of the Premises, vehicles shall be driven and parked only on designated roads and shall not be allowed off road for any reason, nor shall any vehicles or equipment be stored on the Premises. City staff members allowed on the Premises at any given time will not exceed six (6) people. Only small equipment such as cameras, tripods, and miscellaneous small hand-held tools and equipment shall be used to perform Permitted Uses. Permitted Uses will be performed on the Premises under the direction of the City's Bureau of Planning and Sustainability with assistance from the Bureau of Environmental Services, Portland Parks and Recreation staff and the Office of Healthy Working Rivers.

4.2 Access

Access to the Premises will be through the access gate located at the northeast end of the island as more precisely shown on **Exhibit A**. The access gate is secured by an electronic keypad and utilizes a restricted code, which code shall be given only to, and used only by, the following four (4) City employees, one of whom must accompany at all times any person, or group of persons requiring access to the Premises: Mindy Brooks, Dave Helzer, Melissa Brown and Toby Query. The City shall notify Larry Devroy (503-415-6527) or Greg Theisen (503-415-6522) 24 hours in advance each time the City needs to access the Premises to perform the Permitted Uses outlined in Section 3.

4.3 Subject to Prior Existing Rights

This Permit, and all rights granted to City hereunder, is subject to any easements and other rights of record affecting the Premises and City shall not conduct any activities on the

Premises in violation of such previously existing rights. City shall not interfere with (i) the rights or operations of any tenants or other parties authorized by the Port to be present on the Premises, or (ii) the use of property adjacent to the Premises.

5. TERM OF PERMIT

This Permit shall commence on November 23, 2010 and shall terminate on December 31, 2011.

6. COMPENSATION TO BE PAID BY CITY

No Permit fee is required under this Permit.

7. CONDITION OF PREMISES

The Port makes no warranty, guarantee or representation concerning the physical condition of the Premises or the suitability of the Premises for any of City's intended uses, and it is agreed that the Port will not be responsible for any loss, damage or costs which may be incurred by Permittee by reason of any such physical condition.

8. WASTE, REMOVAL AND DEMOLITION

City shall not cause or permit any waste or damage to the Premises or the improvements thereon and shall not remove or demolish, in whole or in part, any existing improvements, trees or vegetation on the Premises, except for small sampling cuttings of those plants required for purposes of the Permitted Uses, without the prior written approval of the Port.

9. UTILITIES

City may not access, connect to or use electrical, telephone, or natural gas or utilities located at or in the vicinity of the Premises, nor may the City install or have installed any utilities on the Premises for any reason.

10. INDEMNITY

To the extent allowed under Oregon law, City agrees to indemnify, hold harmless and defend the Port, its commissioners, directors, officers, and employees, from and against, and to reimburse the Port for all claims, actions, damages, injuries, costs, loss, or expenses incidental to the investigation and defense thereof, arising out of the acts or omissions of, or use or occupancy of the Premises, by, City, its agents, contractors, or employees. To the extent allowed under Oregon law, the Port agrees to indemnify, hold harmless and defend City, its commissioners, officers, and employees from and against and to reimburse City for all claims, actions, damages, injuries, costs, loss, or expenses incidental to the investigation and defense thereof, arising out of the acts or omissions of, or use or occupancy of the Premises, by, the Port, its agents, contractors, employees.

10.1 Damage to Property

City shall compensate the Port for any damage to the Premises, including without limitation any improvements thereon, caused by access to and use thereof by City, its agents, contractors, or employees.

11. INSURANCE

The Port acknowledges that the City is self-insured.

12. COMPLIANCE WITH LAW

City shall conduct its activities under this Permit in compliance with all applicable state, federal, and local laws, regulations, agency guidance documents, Port rules and regulations, and terms of any permits applicable to the Premises, the Permitted Uses, or the Port's property, as each of the foregoing may be amended from time to time. City shall obtain all necessary federal, state and local permits necessary for the Permitted Uses.

13. ENVIRONMENTAL MANAGEMENT AND COMPLIANCE

13.1 Definitions

For the purposes of this Permit, the following definitions shall apply:

13.1.1 Environmental Law

"Environmental Law" shall mean applicable federal, state and local laws, now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law, which in any way govern materials, substances, regulated wastes, emissions, pollutants, animals or plants, noise, or products and relate to the protection of health, natural resources, safety or the environment.

13.1.2 Hazardous Substance

"Hazardous Substance" shall mean any and all substances, pollutants, materials, or products defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under any Environmental Law, and shall also mean fuels, petroleum and petroleum-derived products.

13.1.3 Hazardous Substance Release

"Hazardous Substance Release" shall mean the spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking or placing of any Hazardous Substance into the air or into or on any land or waters, except as authorized by a then-current and valid permit issued under applicable Environmental Law.

13.1.4 Use of Hazardous Substances

City shall not use, handle or store any Hazardous Substances on or about the Premises, except for petroleum-derived products fully contained within motor vehicles.

13.2 Treated Soil or Waste or Soil Containing Industry Byproducts

City shall not store, treat, deposit, place or dispose of on the Premises, without the prior written consent of the Port, which consent may be granted or denied in the Port's sole discretion: (i) soil or waste treated to remove or reduce its Hazardous Substance content, including soil or waste treated on the Premises; (ii) contaminated soil or waste; or (iii) soil containing industry byproducts, including, without limitation, slag.

4- PERMIT AND RIGHT OF ENTRY

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13.3 Environmental Remediation

13.3.1 Response

In the event of a violation of Environmental Law, a violation of an environmental provision of this Permit, a Hazardous Substance Release, or the threat of or reasonable suspicion of the same for which City is responsible under this Permit, City shall immediately undertake and diligently pursue all acts necessary or appropriate to (i) cure or correct the violation, (ii) investigate, contain, stop and remediate and remove the Hazardous Substance Release, and (iii) restore the Premises and other affected property or water.

13.3.2 Port's Right to Review and Comment; Notice to the Port

Prior to the commencement of any investigatory, containment, remediation or removal procedures required by this Permit or by Environmental Law on the Premises or on any affected property or water, the Port shall have, except in the case of an emergency or an agency order requiring immediate action, the right to (i) review and comment on such procedures and (ii) require revisions to any procedures not in compliance with Environmental Law. City shall promptly notify the Port upon becoming aware of (i) a violation or alleged violation of any Environmental Law related to the Premises or to City's occupation or use of the Premises or any environmental provision of this Permit; and (ii) any Hazardous Substance Release on, under or adjacent to the Premises or threat of or reasonable suspicion of any of the same. If notice must be given on the weekend or after 5:00 p.m. on any day, City shall notify the Port by calling the Port's emergency telephone number. That number currently is: (503) 240-2230.

13.3.3 Report to the Port

Within thirty (30) days following completion of any investigatory, containment, remediation and/or removal action required by this Permit, City shall provide the Port with a written report outlining, in detail, what has been done and the results thereof.

14. INSPECTION

The Port reserves the right, at any time and from time to time, after notice to City, to inspect the Premises and City's operations on and use of the Premises: (i) for compliance with applicable law and with the provisions of this Permit, (ii) for the presence of and/or City's management of Hazardous Substances; and (iii) to facilitate the Port's environmental management, permitting, sampling and analysis related to the Premises or any other property of the Port.

15. DUTIES UPON TERMINATION

Upon termination of this Permit, City shall repair any damage to the Premises caused by City's use or activities, shall restore the Premises to its condition at the commencement of this Permit, except for changes made necessary by the Permitted Uses, and shall remove from the Premises all of City's property including equipment, materials and debris.

16. SURVIVAL

City's obligations, including without limitation indemnification obligations, under this Permit shall survive termination.

17. GOVERNING LAW

This Permit shall be governed and construed according to the laws of the State of Oregon, without regard to its choice of law provisions. Venue shall be in Multnomah County.

18. NOTICES

All notices required under this Permit shall be sent certified mail, return receipt requested, or hand delivered, to the addresses set forth below unless changed by the parties by notice in writing:

City of Portland - Bureau of Planning and
Sustainability
1900 SW 4th Avenue
Portland, OR 97201
Contact: Mindy Brooks
WHI Natural Resources Inventory Manager
Phone: (503) 823-7831
Email: mindy.brooks@portlandoregon.gov

The Port of Portland
Property and Development Services
7200 NE Airport Way
Portland, OR 97218
Contact: Patti Freeman
Phone: (503) 415-6048
Email: patti.freeman@portofportland.com

The date of service of such notice by mail is agreed to be three (3) calendar days after the date such notice is deposited in a post office of the United States Post Office Department, postage prepaid, return receipt requested, certified mail or, if delivered by hand, then the actual date of hand delivery.

19. MEDIATION

If any dispute should arise between City and the Port concerning this Permit or the parties' obligations or activities under this Permit, the dispute shall be submitted to mediation before a mediator agreed to and compensated equally by both parties, prior to commencement of arbitration or litigation. If the parties fail to agree on a mediator, a mediator shall be appointed by the presiding judge of the Multnomah County Circuit Court.

20. COUNTERPART

This Permit may be executed in counterpart, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

21. EXHIBITS

All Exhibits attached to this Permit are incorporated herein by this reference.

22. WARRANTY OF AUTHORITY

The individuals executing this Permit on behalf of the Permittee warrant that they have full authority to execute this Permit on behalf of the Permittee.

23. ENTIRE AGREEMENT

This Permit represents the entire agreement between the parties with respect to the subject matter of this Permit, and supersedes all prior agreements, written or oral. No amendment to this Permit shall be effective unless in writing and signed by the parties hereto.

IN WITNESS HEREOF, the parties have subscribed their names hereto effective as of the year and date first written above.

**THE CITY OF PORTLAND, BUREAU OF
PLANNING AND SUSTAINABILITY**

THE PORT OF PORTLAND

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED AS TO FORM

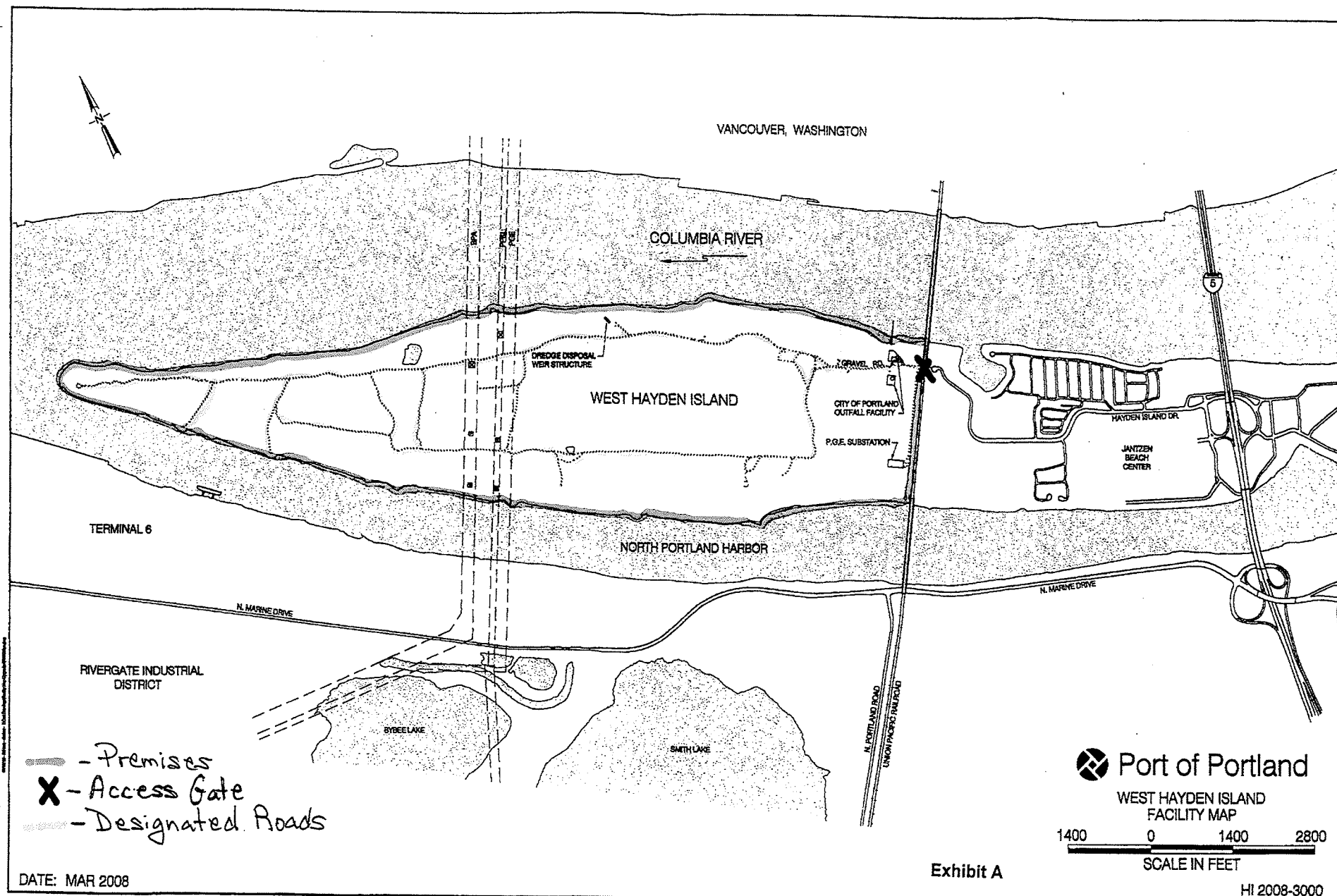
APPROVED AS TO LEGAL SUFFICIENCY
FOR THE PORT



City Attorney

By: _____
Counsel for Port of Portland

Exhibit A





184292

City of Portland
Bureau of
**Planning and
Sustainability**

Sam Adams, Mayor
Susan Anderson, Director

Planning

1900 S.W. 4th Ave., Ste. 7100
Portland, OR 97201-5350

Phone 503-823-7700
FAX 503-823-7800
TTY 503-823-6868

Sustainability

721 N.W. 9th Ave., Ste. 195
Portland, OR 97209-3447

Phone 503-823-7222
FAX 503-823-5311
TTY 503-823-6868

www.portlandonline.com/bps

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Exhibit B

September 22, 2010

TO: Debra Crawford, Port of Portland

FROM: Mindy Brooks, Bureau of Planning and Sustainability

RE: Access Permit for West Hayden Island

Dear Ms. Crawford:

This letter is to request a permit for access to West Hayden Island. Below is information about the project, scope, staffing and timeline for the permit. If you need additional information, please give me a call at 503-823-7831 or email mindy.brooks@portlandoregon.gov.

Thank you

Project Summary

In August 2010, the Portland City Council directed the Bureau of Planning and Sustainability to continue planning for potential annexation of West Hayden Island into the city limits. BPS and Port of Portland have entered into an Intergovernmental Agreement for the project, which is known as West Hayden Island Phase II. The first steps of Phase II are development of studies that will inform conceptual designs and one of the first studies is the Hayden Island Natural Resources Inventory (HINRI). Staff from Bureau of Planning and Sustainability, the Bureau of Environmental Services, Portland Parks and Office of Healthy Working Rivers will be developing the HINRI.

Scope of Work

The HINRI methodology includes the following steps (the full methodology is available in the Natural Resources Inventory Update Project Report

www.portlandonline.com/bps/index.cfm?c=44745&a=216241):

1. Map natural resource features – wetlands, drainageways, vegetation, wildlife habitats, etc.
2. Rank riparian corridor and wildlife habitat functions
3. Designated Special Habitat Areas
4. Write narratives to describe the characteristics and conditions of the natural resources features
5. Produce a report

In order to complete this work, City staff needs ongoing access to West Hayden Island to verify mapping of natural resource features, sample for fish and wildlife existence, document fish and wildlife use during different seasons, document vegetation composition and condition, and characterize bank conditions. The work needs to be done during different seasons because wildlife use varies during migration, nesting and breeding and the presence of vegetation also varies by season.

Timeline

The initial verification of natural resource features and fish and wildlife use needs to occur immediately and through February 2011. Continue monitoring of fish and wildlife use and vegetation composition needs to occur through January 2012. If the West Hayden Island Phase II project time line is extended by either the City or the Port of Portland, access to West Hayden Island would need to be extended to the end of the Intergovernmental Agreement.

Exhibit B

Staffing

The following City staff need ongoing access to West Hayden Island:

- Mindy Brooks, Bureau of Planning and Sustainability
- Eric Engstrom, Bureau of Planning and Sustainability
- Rachael Hoy, Bureau of Planning and Sustainability
- Phil Namney, Bureau of Planning and Sustainability
- Dave Helzer, Bureau of Environmental Services
- Melissa Brown, Bureau of Environmental Services
- Toby Query, Bureau of Environmental Services
- James Allison, Bureau of Environmental Services
- Mary Bushman, Bureau of Environmental Services
- Emily Roth, Portland Parks and Recreation
- Kevin Kilduff, Office of Healthy Working Rivers

In addition, other city staff from the bureaus of Planning and Sustainability, Environmental Services, Portland Parks and/or Office of Healthy Working Rivers may need to accompany the above listed staff for site visits to West Hayden Island as it relates to the HINRI.

Contacts

The lead staff and primary contact for the HINRI is Mindy Brooks, 503-823-7831. The Project Manager for the larger West Hayden Island Phase II project is Eric Engstrom, 503-823 3329.