



OFFICE OF THE MAYOR

To: West Hayden Island Advisory Committee
CC: Planning and Sustainability Commission
From: Mayor Sam Adams
Date: November 21, 2012
Re: Mayor's Proposal for West Hayden Island IGA

Your years of deeply studying the issues related to West Hayden Island (WHI), and your work last week completing the initial "straw poll" regarding options for its future, are already making an impact.

You and others have rightfully said about WHI's future, "the devil is in the details." So, based on your work to date as well as the outlines of the draft financial plan I shared at your last meeting, I have attached new draft items. These include:

- Term sheet that summarizes the key points of the attached IGA and code changes;
- Public Discussion Draft Intergovernmental Agreement (IGA) between the Port of Portland and the City of Portland; and,
- Amendments to Zoning Maps and Code.

As a City government public servant who has worked with the unanswered WHI question for 17 years of its 29 years, these drafts represent my best thinking as of today, but not my final thoughts.

I will only draw my final conclusions after you complete your work today, request public feedback, and study the collective input of the Planning and Sustainability Commission.

These proposals are my own. Only City staff have seen the final draft language until this morning. I am sharing it with you first, out of respect for the advisory committee's considerable investment of time and intelligent thought, and because you and others have asked it of me.

I look forward to reading your own final report. Best of luck today, and best wishes for the Thanksgiving holiday.

The following summarizes the mayor's proposed WHI agreement, highlighting changes and additions to the August 14, 2012 Draft IGA between the Port of Portland and the City regarding annexation and development of West Hayden Island.

Forest Mitigation

- A. On-site mitigation Continue to require forest enhancement on WHI (124 acres), and re-establish some forest in open areas (22 acres). The estimated net present value of this work is \$4 million.
- Remove the previously-proposed requirement for 15% tree canopy on the marine terminal site but add a best management practice provision to encourage trees on-site.
- B. Off-site mitigation
1. Government Island \$8.6 million. Estimated net present value of City- proposed forest re-establishment and enhancements, includes \$3 million in assumed land cost and \$5.6 million to complete all work, including installation, maintenance and 100-years of monitoring. Payment to BES can be in form of a long-term contract instead of lump sum payment. If FAA or Metro disallow this work, the funding converts to a cash grant to BES for mitigation elsewhere.
2. Other sites \$4.1 million. Forest habitat mitigation must achieve 110% of current ecological function as calculated by City's methodology. The percent not achieved through mitigation on WHI and GI converted to a dollar amount to be granted to BES for acquisition and habitat enhancement. This value is the net present value of the expected amount of forest re-establishment work, including land purchase, installation, maintenance and 100-years of monitoring. The amount would increase if not available as a lump sum up front.
- C. Other forest requirements
1. Timing Port must choose to fund forest improvements in 50 acre increments or all up front. The stated amounts go up if not all up front, based on City mitigation methods.
2. Credits Port is allowed to convert any up-front forest work to a mitigation bank in the event the entire WHI site is ever transferred to a third party, if marine terminal development does not happen during the term of the agreement.
3. Forest clearing No forest clearing is permitted outside Dredge Disposal Management Area until state/federal permits in hand.

4. Performance More detailed performance specifications stated for forest mitigation.

Other Environmental Mitigation

- A. Flood plain Port is required to complete FEMA-related ESA consultation prior to asking for City approval of floodplain re-mapping.
- B. Meadowlark habitat \$1.5 million for Grassland improvement for meadowlark habitat goes to BES for eventual transfer to a third party for real estate acquisition and habitat enhancement.
- C. Shallow water Create IGA provisions that require early notification to the City of the state/federal permit application, and minimum mitigation requirements. Impose a local land use review process in the Zoning Code (an Environmental Review like in River Plan) for dock development and related mitigation.
- D. Wetlands Require early consultation and notification, requirements for minimum acres of replacement, and for length of monitoring period. Depend on State and Federal review and do NOT require local land use review. These provisions will be reopened if state/federal regulations weaken prior to development.
- E. Long term protection Create an easement or covenant that commits all parties to keeping the 500+ acres of land zoned Open Space in perpetuity, and include a third party as part of that easement or covenant.

TOTAL ENVIRONMENTAL MITIGATION = \$18.2 million NPV
(+ any state and federal requirements, currently estimated at \$8-10 million)

Community Benefits and Health Mitigation

- A. Housing conditions \$3.6 million. Port pays \$3.6M manufactured home park grant fund to mitigate for health and other impacts on residents of the manufactured home park.
- Mitigation could include down payment assistance for replacement homes, weatherization grants, HVAC upgrades, window replacement, individual development accounts, case management services. Housing bureau would be initial administrator.
- Initial funding to set up program(s) within 6 months, remainder within one year when programs are running. Aim for ability to leverage at least 1:1 state or federal match.

- B. Recreation
 - Acquisition of 6 acres on East Hayden Island for recreational park (Port to acquire). Estimated cost is \$1 - \$3 million. \$7 million for subsequent design and capital improvements.
 - \$2 million for open space planning and recreational trails design and construction.
 - \$3 million to seed endowment for future O&M of trails and new parks.
- C. Community fund
 - \$1.4 million. The Port will fund \$100,000 for 10 years, with continuing funding based on 50 cents per truck trip.
- D. Advisory Committee
 - Retain the previous proposal for an ongoing WHI advisory committee. Duties include reviewing the open space and parks plans, negotiating a good neighbor agreement, providing a forum to discuss any ongoing issues, recommend projects for funding under the community fund, and review of the future HIA.
- E. Phase II H.I.A.
 - \$1.1 million. Require a phase II health impact assessment be included in future federal EIS work prior to port development. Funding set aside to implement recommendations.
- F. Local hiring
 - Retain previous proposal for local hiring program - a “first source agreement” - for North Portland. Specific program outreach/recruitment to Hayden Island residents.

TOTAL COMMUNITY AND HEALTH = \$21.1 million

Transportation

- A. Truck cap
 - Cap the number of round trip truck trips as measured at the port terminal gate at 205 per day.
- B N. Hayden Is. Drive
 - Retain previous proposal to reconstruct North Hayden Island Drive, to include improved pedestrian and bicycle facilities, and buffers. Estimated cost is \$9.6 million (there is an opportunity for state/federal funding).
- C. CRC Bridge
 - Re-opener clause in the IGA if new interstate (I-5) bridge is not constructed as planned.

TOTAL TRANSPORTATION = \$9.6 million

TOTAL = \$48.9 million

V. Amendments to Zoning Maps and Code

The purpose of the proposed zoning code provisions is to describe uses to be allowed on West Hayden Island and to describe the limits of the physical development in a way that is consistent with the concept plan created earlier this year, and with the City Council's Resolution #36805 adopted in July 2010..

The following includes Zoning Map and Code amendments and a new chapter to be inserted into the City's Zoning Code. These pages are organized as follows:

- Staff commentary explaining the proposed map amendment and code language is provided on the left-handed pages.
- Staff proposed code map/language is presented on the right-hand pages.

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Update of City's Zoning Map

The following map establishes the zoning designations that will apply in the area around West Hayden Island. In addition to addressing the zoning on West Hayden Island, the map clarifies the applicable zoning that applies to the Columbia River around West Hayden Island and out to the Oregon State Line and the confluence of the Columbia and Willamette Rivers in front of Kelly Point Park.

In addition to the base zones, the airport noise and height overlay zones will also apply to the island. Since all of West Hayden Island and the surrounding waterways that are being annexed are located within either the 55 DNL, 65 DNL or 68 DNL noise contour, the 'x' overlay will apply to the area of new zoning. Since the entire area is also within the area subject to airport height restrictions, the newly zoned area will include the 'h' airport landing overlay zone.

Although special natural resource code provisions will apply within the plan district, there are areas within the Columbia River and Oregon Slough that are being annexed that are not part of the plan district. However, the city's completed Economic, Social, Environmental and Energy (ESEE) analysis included these areas and recommends that an environmental conservation "c" overlay apply in the Columbia River area that includes the shipping channel, and an environmental protection "p" overlay to the areas in the Oregon Slough being annexed that are outside the plan district.

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BASE and OVERLAY ZONING DESIGNATIONS [\(NOTE THIS IS BEING UPDATED - see draft proposal on next page\)](#)



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The following is a draft of what will be the new zoning boundaries. Note that the in-water areas of the Columbia will have IH zoning applied to acknowledge its use as a shipping channel and that the code will allow the moorage of barges and ships in the zone.

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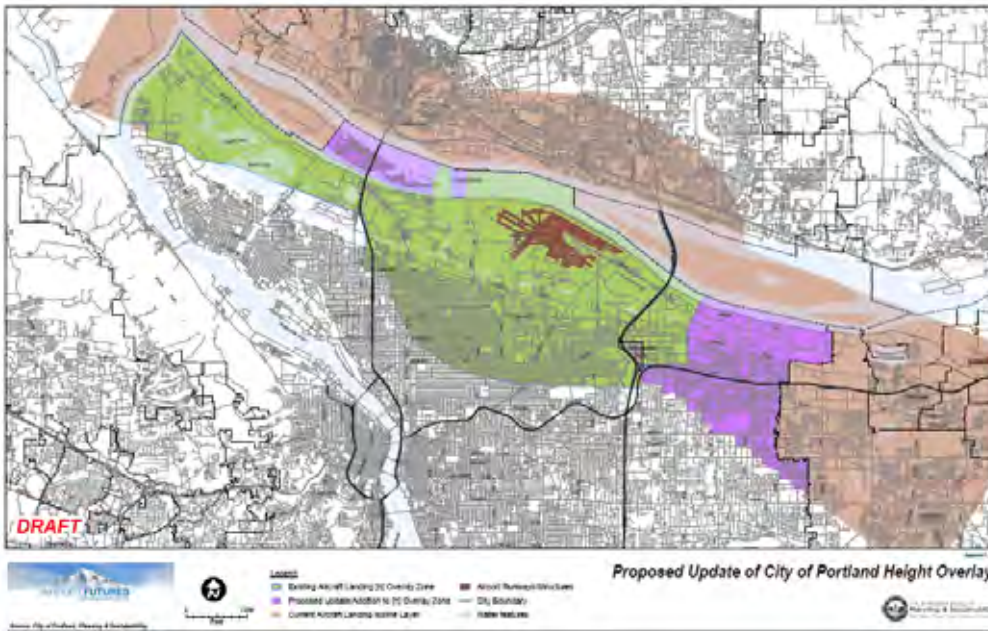
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CHAPTER 33.400
AIRCRAFT LANDING OVERLAY ZONE

Map 400-1 Aircraft Landing Overlay Zone Boundary

During the Airport Future planning process, it was discovered that the regulations for the Aircraft Landing Overlay Zone had not been updated to include areas that had been annexed to the city (Hayden Island and East Portland) since the creation of the regulation. The Airport Futures added the 'h' overlay to these areas and generated a map (400-1) to include at the end of the overlay regulations, to clarify the applicable areas. The map was included as part of that project, but was omitted from the official Zoning Code in error.

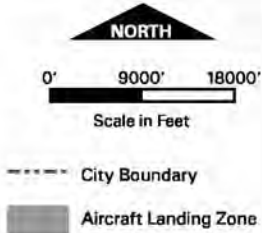
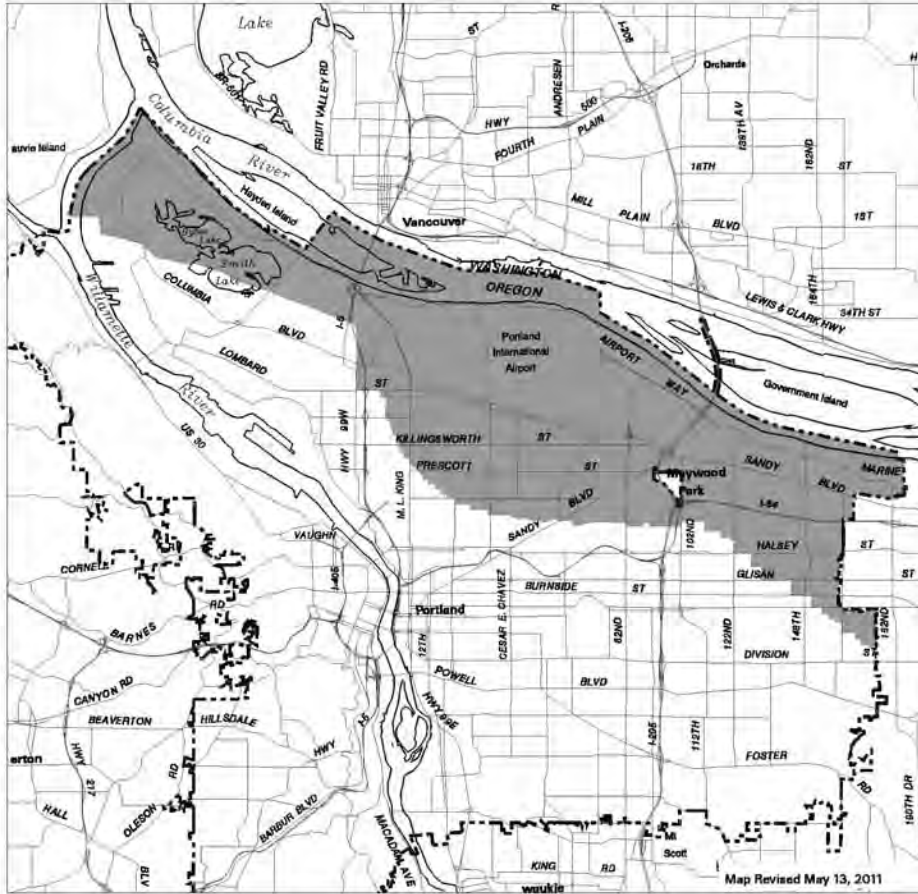
West Hayden Island also lies within the area subject to these restrictions, so this map needs to be updated to include all the areas that are being annexed into the city as part of this planning process. Map 400-1 is being updated to include these areas and will be inserted back within the plan district section of the zoning code.



The following page shows the copy of the current map for the Overlay Zone.

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This is the current Overlay Zone Map



Map 400-1
**Aircraft Landing
Overlay Zone Boundary**

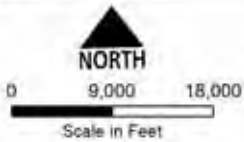
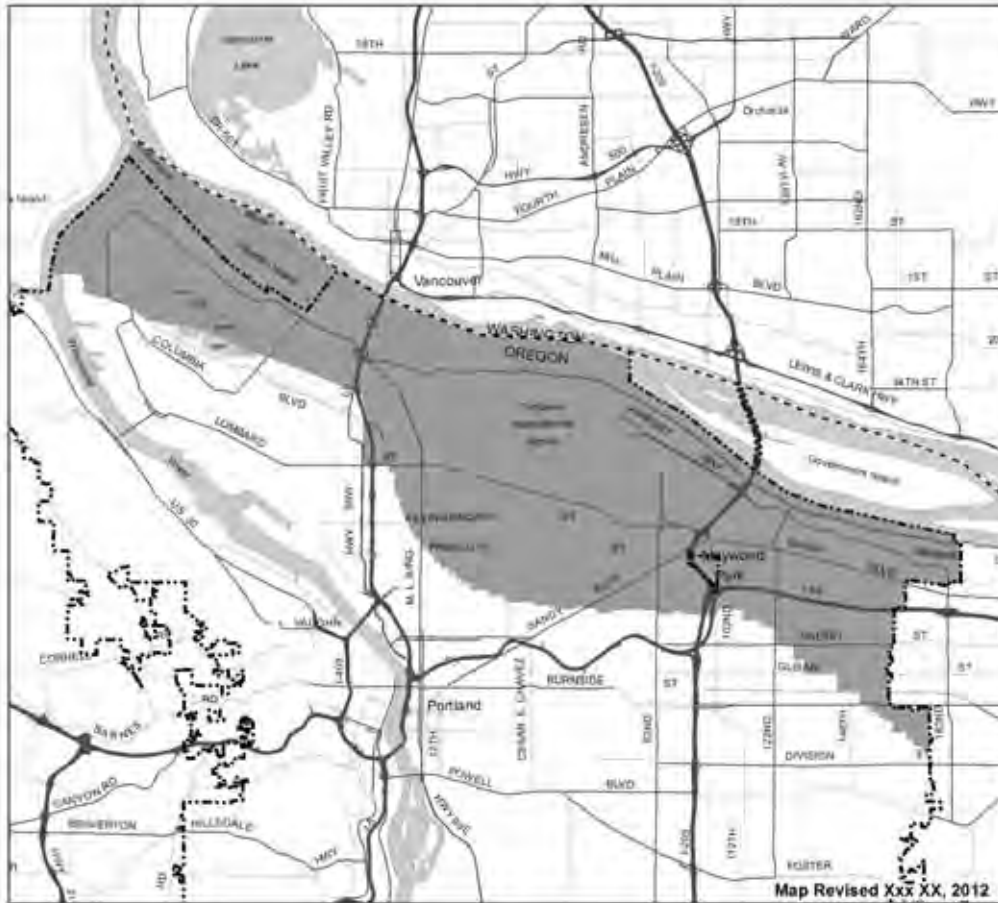
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The following page presents the replacement map.

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This is the proposed Overlay Zone Map



- State Boundary
- - - - City Boundary
- Aircraft Landing Zone

Map 400-1

**Proposed Aircraft Landing
Overlay Zone Boundary**

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CHAPTER 33.595
WEST HAYDEN ISLAND PLAN DISTRICT

33.595 West Hayden Island Plan District

This is a new chapter to cover the regulations that will apply in the West Hayden Island Plan District. The boundaries of the plan district are shown at the end of the chapter. The regulations of the plan district supersede the base zone regulations. The characteristics of the economic and environmental features of the island warrant the establishment of a separate plan district. The establishment of the specific regulations is intended to satisfy a requirement from Metro's Title 13 that the city adopt a district plan for West Hayden Island. A table of contents is provided at the beginning of the chapter. The plan district incorporates the newly annexed area of the island from the Burlington Northern / Santa Fe rail line on the east to the shallow water beyond the tip of the island on the west.

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**CHAPTER 33.595
WEST HAYDEN ISLAND PLAN DISTRICT**

General

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- 33.595.020 Where These Regulations Apply
- 33.595.030 Relationship to other Regulations
- 33.595.040 Special Deep-water Marine Terminal Use Category

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- 33.595.305 Environmental Reports
- 33.595.310 Where These Regulations Apply
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- 33.595.345 Procedure
- 33.595.350 Permit Application Requirements
- 33.595.360 Standards for Utility Lines
- 33.595.365 Standards for Development associated with Parks and Open Areas
- 33.595.370 Standards for Driveways
- 33.595.375 Standards for Resource Enhancement Projects
- 33.595.380 Right of Way Dedications and Improvements
- 33.595.385 Outfalls and Pipes
- 33.595.390 Standards for Tree and Vegetation Removal

West Hayden Island Resource Review

- 33.595.400 Purpose
- 33.595.402 When West Hayden Island Resource Review is Required
- 33.595.405 Procedure
- 33.595.410 Supplemental Application Requirements
- 33.595.420 Approval Criteria
- 33.595.430 Performance Guarantees
- 33.595.440 Special Evaluation by a Professional
- 33.595.450 Modifications That Will Better Meet WHI Resource Review Requirements

Corrections to Violations of the Environmental Regulations of this Chapter

- 33.595.500 Purpose
- 33.595.505 Correction Options

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33.595.010 Purpose

A purpose statement is required to explain the rationale for the regulations. The purpose statement provides a summary of the economic and natural resource features of the plan district and the need for the regulations to meet the multiple objectives of the plan district.

33.595.020 Where These Regulations Apply

This section clarifies the boundaries of the plan district which include the physical land and the surrounding water.

33.595.030 Relationship to Other Regulations

This section provides information on other regulations potentially applicable to the plan district.

33.595.040 Special Deep-water Marine Terminal Use Category

This is a new use category that will apply only within the West Hayden Island plan district. The use category describes the operations that are associated with marine terminals engaged in shipping products on ocean-going vessels either as exports or imports. This use category is referred to in the following sections on allowed and prohibited uses.

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General

33.595.010 Purpose

The West Hayden Island plan district provides opportunities for the development of a new deep-water marine terminal while preserving the character of the open space areas within the plan district for natural resource protection and low impact recreation. West Hayden Island is a significant economic, natural and public resource. West Hayden Island is located at the Columbia River's confluence with the Willamette River. It is adjacent to a deep-water navigation channel, and Interstate 5 plus two mainline railroads cross the island. West Hayden Island provides significant wildlife habitat for migratory and resident species.

33.595.020 Where these Regulations Apply

The regulations of this chapter apply to the West Hayden Island plan district. The boundaries of the plan district are shown on Map 595-1 at the end of this chapter, and on the Official Zoning Maps.

33.595.030 Relationship to other Regulations

This chapter contains only some of the City's regulations for the plan district. Other chapters of the Zoning Code may apply in the plan district, including the Noise Impact Overlay Zone, and the Aircraft Landing Overlay Zone. Activities the City regulates through the Zoning Code may also be regulated by other agencies at the state and federal level, including the regulation of wetlands, areas below ordinary high water and the potential discovery of archeological resources. Applicants should be aware of any state and federal regulations that may apply to development in the plan district.

33.595.040 Special Deep-water Marine Terminal Use Category

This special use category applies only in the West Hayden Island plan district

- A. Characteristics.** Deep-water Marine Terminals are intermodal facilities that provide access between the Columbia River shipping channel and land-based transportation modes. Goods and materials are loaded on or off ships and stored on site. Goods and materials may be transferred to other modes of transport such as rail or trucks, and they may also undergo additional processing, manufacturing or packaging before being transferred to the other transportation modes. Docks, conveyance systems and other facilities are used to transport the materials between the ships and the site. The goods are generally transported between local, regional and North American firms and firms located overseas. Few customers come to the site.
- B. Accessory Uses.** Accessory uses may include docking facilities including the moorage, loading and unloading of river barges, warehouses, outdoor storage yards, rail spur or lead lines, truck and auto fleet parking, vehicle or ship maintenance areas, offices, cafeterias and employee break areas, security areas, and parking.
- C. Examples.** Examples include grain terminals and grain elevators, terminals for the transfer and processing of dry bulk such as fertilizers or minerals, auto import or auto export terminals including post-processing facilities, and break-bulk terminals that transfer miscellaneous goods and container terminals.

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Use Regulations

33.595.100 Uses in the IH zone

This section lists the allowed and prohibited uses in the IH zone in the plan district and supersedes the use table in the base zone. The section includes the use Deep-water Marine Terminal use category under both the allowed and prohibited sections. Certain other existing and potential uses are listed, [including the mooring of boats within waters controlled by Department of State Lands](#), but the intent of this section is to encourage a specific type of industrial development (i.e. a deep-water marine terminal), while limiting the types of uses allowed overall in the IH zone.

33.595.110 Uses in the OS Zone

This section supersedes the use table in the base OS zone. The section limits parks and open space uses and provides geographic limitations to those parks uses that it allows. The intent is to allow limited recreational development on the eastern portion of the island and preserve the western portion for existing and enhanced natural resources. The section also provides clarity that certain utilities that are already on the island can continue, and allows utilities and small scale energy systems that serve an allowed use on the site, which is similar to the base zone.

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Use Regulations

33.595.100 Uses in the IH Zone.

- A. Allowed Uses.** The following uses are allowed in the IH zone in the West Hayden Island plan district.
1. Deep-water Marine Terminals except as stated in Subsection [C](#), below.
 2. Stockpiling of sand, gravel, or other aggregate materials including the placement of dredge materials and associated operations such as dewatering of the materials;
 3. [Mooring of ships and barges within the water;](#)
 4. [Basic Utilities;](#)
 5. [Parks and Open Areas;](#)
 6. [Rail Lines and Utility Corridors;](#)
 7. [Railroad Yards;](#) and
 8. [Radio Frequency Transmission Facilities.](#) Some facilities are allowed by right. See Chapter 33.274.
- B. Limited Uses.** Manufacturing and Production, Industrial Service, or Warehouse and Freight are allowed uses if they have a functional and economic reliance upon the deep water marine terminal that is located in the plan district.
- C. Prohibited Uses.** The following uses are prohibited in the IH zone in the West Hayden Island plan district:
1. Deep-water Marine Terminals that transport or process coal or liquefied natural gas are prohibited in the plan district; and
 2. All other uses not listed in Subsections A or B.

33.595.110 Uses in the OS Zone

- A. Allowed Uses.** The following uses are allowed in the OS zone in the West Hayden Island plan district.
1. Utility Corridors within areas shown on Map 595-1.
 2. The following Basic Utilities are allowed:
 - a. Water and sewer pump stations;
 - b. Sewage disposal and conveyance systems; and
 - c. Basic Utilities that serve a primary use are considered accessory to the primary use being served.

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33.595.110 Uses in the OS Zone (contd)

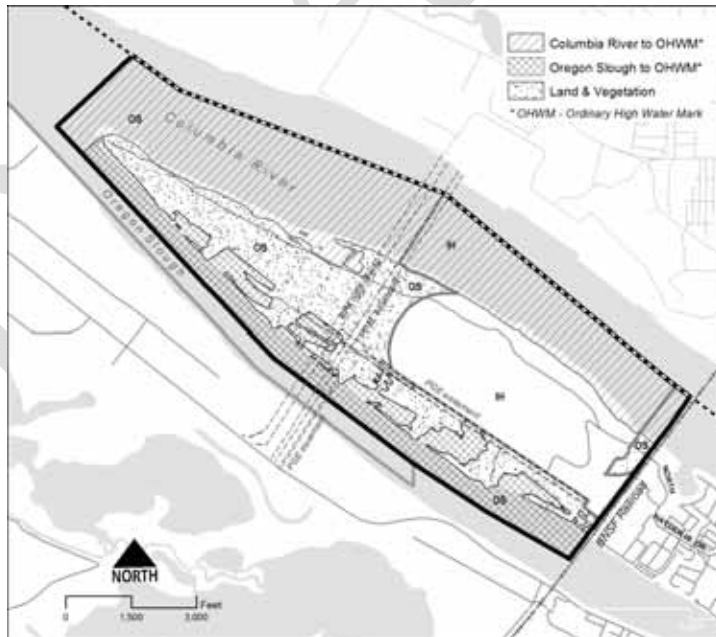
Development Standards

33.595.200 Additional Standards

This section provides additional setback standards from the Columbia River and from the Open Spaced zoned forest to the west of the terminal.

- A. **Setback from the river.** The intent of the river setback is to require all development, except specific development that requires river access (e.g., dock ramps, outfalls, beach trail), to be located at 100 feet upland from the ordinary high water mark of the Columbia River. The goal is to minimize the impacts of development on shallow water habitat, and preserve the public access to the beach.

The ordinary high water mark (OHWM) is a measurement that is considered by the Army Corp of Engineers (ACOE) along the length of the Columbia River to determine their jurisdiction. This mark can vary over time and over geographies, resulting in the OHWM being at one elevation at one end of the island and another at the other end. During the summer of 2012, BPS staff used the current information provided by the ACOE along with Lidar imaging data and mapped out the general location of the OHWM. This is illustrated below. However, development proposals in the future will need to indicate the location of the OHWM as part of future permits or land use reviews.



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3. Specific uses in the Parks and Open Areas category are allowed within certain geographic areas as stated below:
 - a. Within the area west of the Bonneville Power Administration right-of-way, as shown on map 595-1, uses in the Parks and Open Areas category are limited to existing and enhanced natural areas or nature preserves .
 - b. Within the Bonneville Power Administration right-of-way, as shown on map 595-1, and within the area east of the Bonneville Power Administration right-of-way, uses in the Parks and Open Area category are limited to existing and enhanced natural areas or nature preserves and outdoor recreation that consists of recreational trails, trailhead facilities, interpretive centers, viewpoints, and a non-motorized boat launch.
4. Driveways to access allowed uses in the plan district.

- B. Limited Uses.** Basic Utility Uses not allowed by Subsection A are Conditional Uses.
- C. Prohibited Uses.** Uses not listed in Subsections A and B are prohibited in the plan district.

Development Standards

33.595.200 Additional Setbacks. The following setbacks apply in addition to other required setbacks:

A. Setback from the river.

1. Purpose. The purpose of the river setback is to provide public access to the beach, protect and maintain existing natural resources within the setback, and minimize impacts from industrial development on shallow water habitat.
2. Where the setback applies. The setback applies within the IH zone.
3. Setback. Unless exempted in Subsection 4 below, development must be setback 100 feet from the Ordinary High Water Mark of the Columbia River. The Ordinary High Water Mark is determined in accordance with the US Army Corp of Engineers definition and protocol and must be labeled on the site plan.

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33.595.200 Additional Standards (contd)

4. **Exemptions.** Specific exemptions are provided for recreational trails within the setback to encourage the development of a waterfront trail between the port facility and the beach. Allowances for the provision of docks and other structures that need to be connected to the water are provided to ensure an economically viable port. However, development that is allowed within the setback contains limits to the total amount of impacts to ensure that the characteristic of the river is maintained within the setback. Trees are not prevalent within the setback; therefore, much of the development will be able to take place without removing trees. In cases where trees are removed, a standard for tree replacement is provided.
5. **Tree Replacement.** The tree replacement standard applies to the setback area along the river. This area currently predominantly includes of grassy areas and beach. There are few trees located within the river setback and it is likely that the existing trees could be avoided. However, any tree, greater than 6 inches in diameter, that is removed for any purpose must be replaced. A 1:1 ratio for replacement is appropriate to maintain a presence of trees, while allowing for the development of the docks, trail and beach access. This is different than the OS setback, which has established forest canopy of varying ages, and the purpose of the OS setback tree replacement standard is to preserve close canopy forest.

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4. Exemptions. The following development is exempt from the river setback:
- a. Trails. Trails that meet the following standards:
 - (1) The trail is no more than 10 feet wide;
 - (2) The clearing or grading area for the trail is no more than 20 feet wide; and
 - (3) The trail is open to the public.
 - b. Dock ramps and cargo conveyors. Dock ramps provide access to a dock associated with a deep-water marine terminal. A cargo conveyor is an elevated conveyance system that is supported by one or more footings on the ground and is used to transfer material to and from a vessel in the river. Dock ramps and cargo conveyors are exempt from the river setback when all of the following are met:
 - (1) The ramp or cargo conveyor does not block or physically preclude the recreational trail in the setback; and
 - (2) The ramp or cargo conveyor is no more than 60 feet wide, and the cumulative width of all ramps and cargo conveyors in the plan district does not exceed 250 feet.
 - c. Outfalls and pipes. Outfalls and pipes that meet all of the following:
 - (1) The cumulative width of all pipes, supporting structures and rock armoring is no more than 120 feet wide; and
 - (2) The pipes, supporting structures and rock armoring do not block or physically preclude the recreational trail in the setback; and
 - d. Temporary structures. Temporary structures for construction staging and access, or conveyance of dredge materials are exempt from the river setback for a period of time not to exceed 180 days. Temporary structures within the setback for more than 90 days must provide a temporary trail access route if they block the recreational trail in the setback.
5. Tree Replacement. Trees larger than 6 inches in diameter that are removed must be replaced and must meet all of the following:
- a. For every one tree removed, one tree and five shrubs must be planted within the setback. If more than one tree is planted they may be clustered;
 - b. If more than three trees are removed, the planting must include at least three different tree species and three different shrub species; and
 - c. All vegetation planted must be native and listed on the Portland Plant List.

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B. **Setback from OS Zone.** The intent of the OS setback standard is to limit developmental impacts to the adjoining habitat in the Open Space (OS) zone by maintain tree canopy coverage as a buffer between uses. The total width of the setback is 100 ft from the OS zone boundary. Specified development is allowed within the setback provided that trees removed are replaced at a density that preserves closed canopy forest. Tree replacement must occur within the setback to maintain the buffer between the industrial and open space uses.

2. **Where The Regulations Apply.** The regulations apply to the first 100 feet of the IH zone adjacent to the OS zone to provide a buffer at the edge of the IH zone. A map is provided at the end of the chapter to clarify the location.

3. **Setback Area Regulations.** Development, clearing and grading are limited to the exceptions below in order to maintain the forested buffer that exists in this area.

4. **Exceptions.** Within the 100 foot setback, a limited set of exceptions provides a small amount of flexibility in the case that the final design of the rail loop or edge of the development doesn't conform with the designs that were developed during the Concept Plan for the island. These exceptions apply generally to development related to the perimeter of the marine terminal. However, the area where exceptions may be allowed contains a large number of trees, so a condition is provided to ensure the replacement of any trees removed in the setback.

5. **Tree Replacement.** The OS setback contains mature bottomland hardwood forests of varying ages. The intent of the tree replacement standard is to reestablish close canopy forest within the setback as a buffer between the industrial uses and the environmental resources in the OS to be protected. For a bottomland hardwood forest assemblage, one tree per 100 feet is assumed to create closed canopy. In addition, one of two options for shrubs and other plants must be chosen to create a multi-story forest supporting a variety of wildlife species.

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B. Setback from OS Zone.

1. Purpose. The purpose of this setback area is to preserve tree canopy within the IH zone as a vegetated buffer between the deep-water marine terminal and associated infrastructure, and the OS zone. The setback area will help to reduce the detrimental impacts of heavy industrial development on the natural resources and functional values that exist within the OS zone west of the development. The setback area will also provide some flexibility for future rail infrastructure and security to serve the marine terminal.
2. Where the regulations apply. The regulations apply to a 100 foot setback area within the IH zone, adjacent to the OS zone, as shown on map 595-2.
3. Setback area regulations. Except as described in paragraph B.4 below, development, clearing and grading are prohibited within the 100 foot setback from the OS zone.
4. Exceptions. The following development is allowed in the OS setback area when the standards of paragraph B.5, below, are met:
 - a. Railroad spur or lead lines and railroad yards associated with a deep-water marine terminal;
 - b. Development required to provide security for the deep-water marine terminal; and
 - c. Driveways; and
 - d. Clearing and grading that is required in order to construct the development allowed in subparagraphs a. – c.
5. Tree Replacement. Trees larger than 6 inches in diameter that are removed must be replaced within the OS or IH setback and must meet all of the following. Trees listed as Nuisance Plants on the Portland Plant list do not count toward this requirement:
 - a. ~~For every tree removed that is at least 6 inches of diameter, a 100 square foot area must be planted choosing one of the following two planting plans. See Figure 595-1, Example Planting Plan:~~
 - (1) One tree, five shrubs, and four other plants are required to be planted for every 100 square feet of vegetated area. Trees may be clustered; or
 - (2) One tree and five shrubs are required to be planted for every 100 square feet of vegetated area, and the planting area must be seeded with a native grass and forb seed mix at a ratio of 30 pounds per acre. Trees may be clustered.
 - b. When more than three trees are planted, the planting includes at least three different tree species and three different shrub species; and
 - c. All vegetation must be native and selected from the *Portland Plant List*.

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Figure 595-1 Example Planting Plan

This figure is included in the code to illustrate the intent for the vegetation replacement that is required for each 6 inches of tree diameter removed through the provisions of 33.595.200.B.5 and 33.595.390 shown later in this document.

C. Setback from IH Zone. The intent of the IH setback standard is to further limit developmental impacts to the adjoining habitat in the Open Space (OS) zone by extending the tree canopy coverage into the OS zone as a buffer between uses. The width of the setback is 100 ft into the OS zone itself, and limits all development, including recreational development with the buffer. Only a single driveway access is allowed to cross into the buffer provided that trees removed are replaced at a density that preserves closed canopy forest. Tree replacement must occur within the setback to maintain the buffer between the industrial and open space uses.

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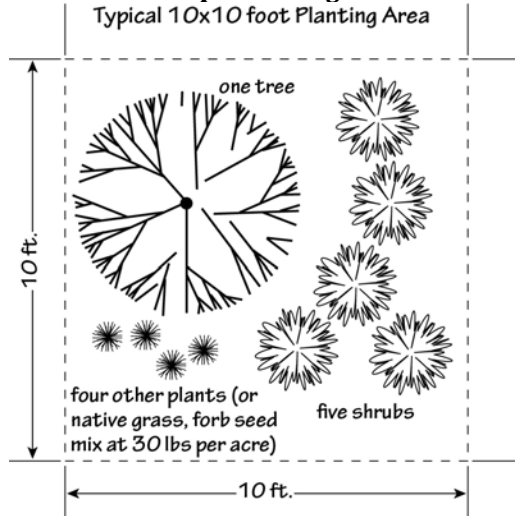
Deleted: 33.595.210 Landscaping Requirements¶

Between 40 and 50 percent of the area proposed for annexation as industrial development is covered with a mature bottomland hardwood forest including cottonwood and ash trees. As a newly annexed area, the area should be developed in alignment with city policies and goals. In 2007, the City's Urban Forestry department released the city's *Urban Forestry Management Plan*, with the intent to create citywide goals for forest canopy. The plan called out for a goal of 15% canopy within commercial and industrial areas. The standards ensure that this goal is met as the land is developed in the future.¶

¶
The River setback and OS setback areas are not counted as part of this equation. The 15% canopy goal applies to the IH excluding the setback areas. ¶

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Figure 595-1
Example Planting Plan
 Typical 10x10 foot Planting Area



C. Setback from IH Zone.

1. Purpose. The purpose of this setback area is to preserve tree canopy adjacent to the IH zone as a vegetated buffer between the deep-water marine terminal and associated infrastructure, and the OS zone. The setback area will help to reduce the detrimental impacts of heavy industrial development on the natural resources and functional values that exist within the OS zone west of the development.
2. Where the regulations apply. The regulations apply to a 100 foot setback area within the OS zone, adjacent to the IH zone, as shown on map 595-2.
3. Setback area regulations. Except as described in paragraph B.4 below, development, clearing and grading are prohibited within the 100 foot setback from the IH zone.
4. Exceptions. The following development is allowed in the IH setback area when the standards of paragraph C.5, below, are met:
 - a. A driveway and clearing and grading that is required in order to construct the driveway may cross the setback area to provide maintenance access to the OS zone.
5. Tree Replacement. Trees larger than 6 inches in diameter that are removed must be replaced within the OS or IH setback and must meet all of the following. Trees listed as Nuisance Plants on the Portland Plant list do not count toward this requirement:
 - a. For every tree removed that is at least 6 inches of diameter, a 100 square foot area must be planted choosing one of the following two planting plans. See Figure 595-1, Example Planting Plan:

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33.595.220 Maximum Truck Transportation Impacts

As part of the development of the plan district, initial transportation studies have been run for a variety of scenarios and have determined that the existing street network, with the development of the Columbia River Crossing (CRC), would continue operating at a satisfactory level of service. This means that traffic generated by the development will be using North Hayden Island Drive to access Interstate 5 and the region. There is a concern over the uncertainty of the type of terminal and the amount of traffic it may create, considering that development may not occur for over ten years. The threshold that is proposed here ensures that a future Marine Terminal will generate a relatively small number of heavy truck trips. The [205](#) heavy trucks is considered an adequate number to allow the operations of two bulk terminals, one auto terminal [and marine related manufacturing](#) as proposed in the Concept Plan. If the threshold of trips is exceeded, it would require a legislative amendment to the plan district. This would require approval by the City Council, and would trigger additional transportation studies at that time.

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(1) One tree, five shrubs, and four other plants are required to be planted for every 100 square feet of vegetated area. Trees may be clustered; or

(2) One tree and five shrubs are required to be planted for every 100 square feet of vegetated area, and the planting area must be seeded with a native grass and forb seed mix at a ratio of 30 pounds per acre. Trees may be clustered.

b. When more than three trees are planted, the planting includes at least three different tree species and three different shrub species; and

c. All vegetation must be native and selected from the *Portland Plant List*.

33.595.220 Maximum Truck Transportation Impacts

A. Purpose. Deep water marine terminals can have a wide range of transportation impacts depending on the type of materials shipped, their mode of shipping across land, and how the materials are handled on site. The development proposed for West Hayden Island relies primarily on rail and water modes of transportation, and is intended to have a limited impact on the adjoining street network on Hayden Island. The regulations provide a maximum threshold of heavy truck trips that will be generated by the marine terminal development in the plan district. The effect of this threshold is that a legislative project to amend the plan district would be necessary to allow a greater amount of truck traffic. Proposed or expanding marine terminal or industrial development must document that their truck traffic is within the threshold.

B. Maximum Heavy Truck Traffic. The total daily traffic of heavy trucks as defined in Chapter 33.910 generated by uses and development in the IH zone entering and exiting the plan district (or the marine terminal and associated industrial development) does not exceed 205 trips. Adjustments are prohibited.

Deleted: 33.595.210 Forest Requirements in the IH zone.

A. Purpose. The purpose of this regulation is to ensure that the forest canopy within the IH zone is preserved or replaced to meet the goals of the *Urban Forest Management Plan*. West Hayden Island includes a significant amount of mature forest canopy. The City's *Urban Forest Management Plan* has a goal of fifteen percent forest canopy cover for industrial and commercial areas. The standard provides an option to maintain a minimum amount of forest coverage through preservation of the existing forest or through a replacement planting on site.

B. Forest Cover Standard. Fifteen percent of the portion of the area zoned IH must be retained or established in canopy forest. Trees used for required landscaping, such as within setbacks or parking lots, may apply toward the minimum tree canopy. The canopy must meet the standards below:

1. Retained tree canopy must be based on aerial photographs and documented on a site plan.
2. Replacement trees meet this standard if one tree is proposed for every 100 square feet of area of tree canopy to be established. Trees must be native and selected from the *Portland Plant List*.

Deleted: 33.595.210 Forest Requirements in the IH zone.

A. Purpose. To maintain the existing forest within the IH zone until development is imminent.

B. Forest Standard. Placement of fill or removal of trees outside the federally-designated dredge deposit management area is not allowed until the National Environmental Policy Act process is completed and necessary Clean Water Act 404 permit(s) have been received.

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33.595.230 Parking

The existing minimum and maximum parking requirements are based upon certain use and development categories and use the square footage of buildings in these uses to define the number of parking required. Marine terminals have a wide range of potential development patterns, and the amount of building square footage does not relate to the number of employees in similar ways to other uses. As an example, an auto terminal may have very few buildings but a larger workforce than a potash terminal which has a large storage building for the materials but is heavily automated. As a result, it is difficult to apply minimum and maximum parking ranges to the potential development.

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C. Supplemental Application Requirements. All proposals for new development or expansions of existing development that increase floor area or exterior development more than 10,000 square feet must provide an estimate of total daily heavy truck trips generated by industrial uses in the IH zone as part of the permit application.

33.595.230 Parking. There are no minimum or maximum parking requirements in the plan district.

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Environmental Regulations

The West Hayden Island plan district has its own set of environmental regulations. The plan district does not rely on environmental overlay zones within its boundaries. Instead, the environmental regulations apply to any development within the Open Space (OS) zones and below the ordinary high water mark within the Heavy Industrial (IH) zones.

33.595.310 Where These Regulations Apply

This section clarifies that the environmental regulations apply only within the boundaries of the West Hayden Island plan district, in areas zoned OS and in areas zoned IH that are below ordinary high water mark. For the purpose of these regulations, ordinary high water mark is the measurement determined in accordance with the protocol established by the Army Corp of Engineers who use this mark to determine regulatory jurisdiction. This agency has estimated this measurement through the Columbia River and Oregon Slough.

33.595.315 When These Regulations Apply

This section illustrates the types of development that trigger the Environmental Regulations. These examples are similar to the types of development that trigger the regulations in environmental zones.

Environmental Regulations

33.595.300 Purpose

The environmental regulations in the West Hayden Island plan district:

- Protect resources and functional values that have been indentified by the City as providing benefits to the public;
- Provide opportunities for passive recreation;
- Provide opportunities for natural resource mitigation, remediation, and enhancement;
- Encourage coordination between City, Port, regional, state, and federal agencies with jurisdiction over some or all natural resources on and around West Hayden Island.
- Ensure consistency with other City goals, along with other regional, state, and federal goals and regulations.

33.595.305 Environmental Reports

The application of the environmental regulations is based on the Hayden Island Natural Resources Inventory (HINRI). The HINRI identifies the resources and describes the functional values of the resource sites. Functional values are the benefits provided by resources. The values for each resource site are described in the inventory section of these reports.

33.595.310 Where These Regulations Apply

The regulations of Sections 33.595.300 through 33.595.505 apply in the plan district within the Open Space (OS) zone, and within the Heavy Industrial (IH) zone below the ordinary high water mark. For the purposes of the regulations of this chapter, the ordinary high water mark is determined in accordance with the Army Corp of Engineers definition and protocol.

33.595.315 When These Regulations Apply

Unless exempted by Section 33.595.320, below, the regulations of this chapter apply to the following:

- A. Development;
- B. Removing, cutting, mowing, clearing, burning, or poisoning native vegetation listed in the *Portland Plant List*;
- C. Planting or removing plants listed on the Nuisance Plants List;
- D. Changing topography, grading, excavating, and filling;
- E. Resource enhancement; and
- F. Dedication and expansions of public rights-of-way.

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33.595.320 Items Exempt From These Regulations

This section lists the types of development that are exempt from the Environmental Regulations. Many of these exemptions are similar to those exemption listed in Chapter 33.430 Environmental Overlay Zones. However, some specific exemptions have been added to address circumstances unique to West Hayden Island, such as dredging within the river, and the limited amount of construction that will need to take place in the river to install docks, dock approaches and material conveyance systems out from the shoreline, consistent with the concept plan. If these features exceed the amounts allowed through an exemption, a Natural Resource Review will be required.

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33.595.320 Items Exempt From These Regulations

The following items, unless prohibited by Section 33.595.325, below, are exempt from the regulations of this chapter. Other City regulations such as Title 10, Erosion Control, must still be met:

- A. Change of ownership;
- B. Land Divisions and Property Line Adjustments;
- C. Temporary emergency procedures necessary for the protection of life, health, safety, or property;
- D. Existing development, operations, and improvements, including the following activities:
 1. Maintenance, repair, and replacement of existing structures, exterior improvements, roads, public recreational trails, public rest points, public view points, public interpretative facilities, and utilities. Replacement is not exempt whenever coverage or utility size is increased;
 2. Continued maintenance of pastures, lawns, and other planted areas, including the installation of new irrigation and drainage facilities, new erosion control features, and the installation of plants except those listed on the Nuisance Plants List. Pruning trees and shrubs within 10 feet of structures;
 3. Placement or removal of dredge material and related operations in an existing federally-designated dredge management facility;
 4. Alterations to buildings that do not change the building footprint and do not require adjustments to site-related development standards;
 5. Operation, maintenance, and repair of the following:
 - a. Irrigation systems;
 - b. Stormwater management systems;
 - c. Pumping stations;
 - d. Erosion control and soil stabilization features; and
 - e. Municipal sewer conveyance pipes and outfalls.
 6. Dredging within the Columbia River below elevation -14 feet (NAVD88) [as determined in accordance with the US Army Corp of Engineers definition and protocol](#);
 7. Removing vegetation listed on the Nuisance Plants List;
 8. Removing trees or portions of trees when they pose an immediate danger to life safety or property, as determined by the City Forester or an arborist;
 9. Exterior work activities on deep-water marine terminal docks, dock access structures or conveyance system structures; and
 10. Development over existing paved surfaces.

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33.595.320 Items Exempt From These Regulations (contd)

E.3. West Hayden Island may be used as a receiving site for mitigation or enhancement related to natural resource impacts elsewhere in Portland. The impacts of the mitigation must be permitted through a state or federal process and may or may not also go through a local environmental review. In this situation, mitigation or enhancement actions on West Hayden Island are exempt.

Mitigation or enhancement related to natural resource impacts outside of Portland may go to West Hayden Island but are not exempt and must either meet standards or go through environmental review.

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E. The following new development and improvements:

1. Natural resource enhancement performed as mitigation or remediation when it meets the following:
 - a. The enhancement is for impacts to natural resources located within the City of Portland but off of West Hayden Island; and
 - b. The enhancement is permitted through a state or federal process including but not limited to a US Army Corps of Engineers 404 permit, Oregon Department of State Land removal-fill permit, Endangered Species Section 7 permit, or Natural Resources Damages Assessment;
2. Planting of native vegetation listed on the *Portland Plant List* when planted with hand-held equipment;
3. Public street and sidewalk improvements if the improvements are within an existing public right-of-way used by truck or automobile traffic;
4. Groundwater monitoring wells constructed to the standards of the Oregon Water Resources Department, and water quality monitoring stations when access is by foot only;
5. Utilities installed above or below portions of public rights-of-way or within existing utility easements as shown on Map 595-1;
6. Utility service using a single utility pole, or where no more than 100 square feet of ground surface is disturbed landward of the top of bank of water bodies, and when the disturbed area is restored to its pre-construction condition;

Deleted: 1. In the IH zone, docks located outside of shallow water habitat. Shallow water habitat is defined as the area between the ordinary high water mark and elevation -14 feet (NAVD88) in accordance with the by the US Army Corps of Engineers definition and protocol;¶
 ¶
 2. In the IH zone, dock ramps, cargo conveyors, and armoring associated with a dock ramp or cargo conveyor. Dock ramps provide access to a dock associated with a deep-water marine terminal. A cargo conveyor is an elevated conveyance system that is supported by one or more footings on the ground and is used to transfer material to and from a vessel in the river. Dock ramps and cargo conveyors are exempt when they meet the following: ¶
 ¶
 a. The ramp or cargo conveyor does not block any riverfront trail; and¶
 ¶
 b. The ramp or cargo conveyor is no more than 60 feet wide, and the cumulative width of all ramps and cargo conveyors does not exceed 250 feet.¶
 ¶
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33.595.320 Items Exempt From These Regulations (contd)

33.595.325 Prohibitions

The planting and propagation of nuisance plants is prohibited in environmentally regulated areas of the city. The prohibition is included in this plan district.

Environmental Development Standards

These sections provide a set of development standards to allow limited types of development to occur without having to go through a Natural Resource review, provided they meet the conditions required. The intent is to encourage some types of development follow a set of non-discretionary standards to provide adequate mitigation for impacts, or to allow certain low impact recreation uses that have a public benefit. If the development cannot meet these standards, it will have to gain approval through a Natural Resource Review before submitting for permit.

33.595.340 Purpose

This section lays out the purpose for providing a set of Environmental Development Standards within the plan district.

33.595.345 Procedure

This section provides the process for developing under the Environmental Development Standards. Only the types of development listed in these sections can use these development standards. If a development does not comply with these standards and/or does not propose development that is exempt from these regulations, it must go through Natural Resource Review.

9. Temporary site investigative work including soil tests, land surveys, groundwater and water quality monitoring stations when all of the following are met:
 - a. The work is conducted using hand-held equipment only;
 - b. The disturbance is temporary;
 - c. Disturbance areas are restored to pre-existing conditions; and
 - d. No native trees identified in the *Portland Plant List* are removed.
 10. Installation of temporary fencing to protect resource enhancement project planting areas, or to close off or control the use of illegal trails. The fence must be removed within 5 years; and
 11. Installation of signage as part of public recreational trail and resource enhancement projects.
- F.** Hand removal of trash, provided that native vegetation is not removed or damaged.

33.595.325 Prohibitions. The planting or propagation of any plant listed on the *Nuisance Plant List* is prohibited.

Environmental Development Standards

33.595.340 Purpose

The environmental development standards are intended to:

- A.** Minimize impacts on resources and functional values;
- B.** Provide clear limitations on disturbance;
- C.** Ensure that new development and alterations to existing development are compatible with and preserve the resources and functional values protected by the environmental regulations; and
- D.** Provide clear planting and erosion control requirements.

33.595.345 Procedure

Compliance with the standards of Sections 33.595.340 through .390 is determined as part of the building permit or development permit application process and is required for all development. When a proposal cannot meet a standard, or when there are no applicable standards, the proposal must be approved through West Hayden Island Resource Review. Discretionary review is required only for the portions of the development that cannot meet the applicable standards. Where a proposal can meet the standards, the applicant may choose to go through the discretionary review process, or to meet the objective development standards.

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33.595.350 Permit Application Requirements

These sections provide the process requirements for proposing development as part of a building permit review under the Environmental Development Standards. As part of these requirements, the applicant will need to provide the location of the Ordinary High Water Mark (OHWM) as defined by the Army Corp of Engineers. This mark can fluctuate over time and geography, and was mapped as of 2012 for illustrative purposes (see map related to 33.595.200 commentary).

However, future permits and land use [reviews](#) will need to secure updated elevation information from the Corp at the time they are submitted.

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33.595.350 Permit Application Requirements

A building permit or development permit application that is reviewed for compliance with the standards of this chapter requires more information than a permit not affected by these provisions. The information in Subsections A and B must be submitted with permit application plans. Submission of the information in Subsection C is optional.

- A.** An existing conditions site plan including:
1. Outline of any existing disturbance area, including existing utility locations;
 2. Location of any wetlands or water bodies on the site or within 50 feet of the site. Indicate the location of the top of bank, ordinary high water mark as determined in accordance with the US Army Corp of Engineers definition and protocol, centerline of stream, or wetland boundary as appropriate;
 3. Vegetative cover on site, indicating species composition;
 4. Within the disturbance area, all trees that are more than 6 inches in diameter must be indicated by size and species; and
 5. Topography shown by contour lines at 2 foot vertical contours in areas of slopes less than 10 percent and at 5 foot vertical contours in areas of slopes 10 percent or greater.
- B.** Proposed development plan including:
1. Outline of the proposed disturbance area, including all areas of proposed utility work;
 2. Location and description of all proposed erosion control devices;
 3. A stormwater management plan;
 4. A landscape plan indicating the size, species, and location of all vegetation to be planted in the environmental sub-districts; and
 5. Where applicable, the location and specifications of the site enhancement option with dimensions, a list of Nuisance or Prohibited Plants to be removed, and a landscape plan indicating the size, species, and location of all vegetation to be planted.
- C.** Photographs of the site are not required but are encouraged to supplement the existing conditions site plan.

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33.595.360 Standards for Utility Lines

These are the standards for utility lines. They are a modified version of the standards of Chapter 33.430 Environmental Overlay Zones, but with allowances for work within an existing utility easement and a different set of tree removal/replacement standards.

33.595.365 Standards for Development Associated with Uses in the Parks and Open Areas Category.

This section provides several sets of standards to address many of the parks and open space development that was envisioned in the West Hayden Island Final Base Concept Plan. These include standards for trails and viewpoints, non-motorized boat launches, and possible parking areas and structures that could be affiliated with parks and open space uses, such as trailhead or beach parking or a smaller structures that could provide park interpretive or management facilities or a covered rest area.

Other parks development or parks development not specifically addressed under these standards (or through any exemptions above) would need to receive approval through a Natural Resource Review.

- A. **Trails and Viewing Areas.** These provide a series of standards to allow a trail network to be constructed without requiring an environmental review. The maximum width of 60 inches should allow for a trail to be built that meet ADA standards. A limited number of viewing areas that were shown as part of the Concept Plan will be allowed as part of this network. Trees that are removed will need to be replaced to ensure the maintenance of the tree canopy on the island.

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33.595.360 Standards for Utility Lines

The following standards apply to utility lines, except outfall pipes and structures associated with an outfall pipe. All of the standards must be met. Modification of any of these standards requires approval through a West Hayden Island Resource Review.

- A. Disturbance area. When a utility line is located outside of an existing [right of way or utility easement](#), the disturbance area may be no greater than 10 feet wide. Existing utility easements are shown on Map 595-1. There is no disturbance area limitation on utility lines located within an existing utility easement;
- B. The construction of a utility line may not occur within a stream channel, wetland, or water body; and
- C. The standards of 33.595.400, Tree and Vegetation Removal, must be met.

33.595.365 Standards for Development Associated with Uses in the Parks and Open Areas Category.

The following standards apply to development associated with uses allowed by paragraph 33.595.110.A.3. All of the standards must be met. Modification of any of these standards requires approval through a West Hayden Island Resource Review.

- A. **Trails and viewing areas.** The following standards apply to trails and viewing areas:
 1. The trail may not be greater than 60 inches wide;
 2. The disturbance area for the trail may not be greater than 15 feet wide.
 3. Except as allowed by subparagraph B.4.a, the disturbance area associated with a trail must be set back at least 50 feet from the top of bank of a water body, or be located landward of the ordinary high water mark of the Columbia River or Oregon Slough;
 4. Viewing areas developed in conjunction with a trail must meet the following:
 - a. No more than four viewing areas are allowed within the OS zone in the plan district; and
 - b. The maximum permanent disturbance area for each viewing area is 500 square feet.
 5. [Interpretive and directional signs are allowed within the disturbance area;](#)
 6. Exterior lights are not allowed; and
 7. The standards of 33.595.390, Tree and Vegetation Removal, must be met.

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33.595.365 Standards for Development Associated with Uses in the Parks and Open Areas Category. (contd)

B. **Boat Launches and Docks.** The Concept Plan considered several possible locations to place a non-motorized boat launching area. Any dock structure must be associated with the boat launch; the dock may not be stand alone without a launch. These standards provide an opportunity for a single, smaller hand boat launch and dock to be created on WHI without requiring a land use review. To reduce impacts, limitations on the size of the dock and approach are imposed and any trees that are removed will need to be replaced.

C. **Parking areas and Structures.** The Concept Plan envisioned the need to accommodate parking and facilities for people using the trails and beach areas on WHI. These standards provide an opportunity for these types of facilities to be developed without undergoing a Natural Resource Review, provided that they are limited in size and location. Tree replacement is required to ensure the maintenance of the islands forest canopy. Larger recreational facilities may be proposed, but would have to be approved through a land use review.

B. Boat launches and docks. The following standards apply to boat launches and docks in the OS zone:

1. Boat launches and docks for motorized boats are not allowed in the plan district;
2. Only one boat launch and associated dock for non-motorized boats is allowed in the plan district;
3. The boat launch and associated dock may be located below the ordinary high water mark of the Columbia River or Oregon Slough;
4. A trail to access the boat launch is allowed as follows:
 - a. The trail may be located below the ordinary high water mark of the Columbia River or Oregon Slough to link to the boat launch and dock to an upland area;
 - b. The trail width may not be greater than 72 inches wide; and
 - c. The disturbance area for the boat launch access trail may not be greater than exceed 16 feet wide.
5. The dock associated with the boat launch may not be greater than 8 feet wide and may not be greater than 480 square feet in total area;
6. Exterior lights are not allowed; and
7. The standards of 33.595.[390](#), Tree and Vegetation Removal, must be met.

C. Parking areas and structures. Parking areas and structures associated with uses in the Parks and Open Areas category allowed by paragraph 33.595.110.A.3 must meet the following:

1. No more than two areas containing parking or other structures are allowed within the OS zone in the plan district. [Signage used for trails are not considered structures for the purpose of this standard](#);
2. The total permanent disturbance area for the areas within the plan district containing parking and other structures may not exceed 20,000 square feet;
3. The permanent disturbance area for the parking or other structures must be set back at least 50 feet from the ordinary high water mark of the Columbia River and the Oregon Slough, and 50 feet from the top of bank of any other water body;
4. The total maximum floor area allowed for buildings associated with Parks and Open Areas in the plan district is 5,000 square feet;
5. Buildings must be set back at least 10 feet from the edge of the permanent disturbance area; and
6. The standards of 33.595.[390](#), Tree and Vegetation Removal, must be met.

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33.595.370 Standards for Driveways

This section provides a set of standards for unpaved driveways. It allows the opportunity in limited instances to build a new driveway, or realign an existing driveway to serve uses on the driveway. It requires a bridge crossing for any driveway crossing a waterbody, and requires mitigation for tree removal.

33.595.375 Standards for Resource Enhancement Projects

This section provides a set of standards for resource enhancement projects that do not require excavation or fill work within wetlands and do not result in the removal of any native vegetation. Enhancement projects that cannot meet these standards must go through a Natural Resources Review; there are specific approval criteria for enhancement projects.

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33.595.370 Standards for Driveways

The following standards apply to new or relocated driveways. Modification of any of these standards requires approval through a West Hayden Island Resource Review.

- A. Where a driveway crosses a water body, the crossing must be by bridge, and the foundation or footings of the bridge must be located above the top of bank;
- B. The driveway may not be greater than 20 feet wide;
- C. The disturbance area associated with the driveway may not be greater than 40 feet wide;
- D. Driveways serving parks and open space uses must be paved. Driveways serving other uses may be unpaved.
- E. Exterior lights are not allowed; and
- F. The standards of 33.595.390, Tree and Vegetation Removal, must be met.

33.595.375 Standards for Resource Enhancement Projects

The following standards apply to resource enhancement projects. All of the standards must be met. Modification of any of these standards requires approval through West Hayden Island Resource Review.

- A. Removing native vegetation listed on the *Portland Plant List* is not allowed;
- B. Excavating or filling wetlands are not allowed;
- C. Excavating is not allowed below the ordinary high water mark. Fill is allowed below the ordinary high water mark provided all of the following are met:
 - 1. The final slope after grading is 33 percent or less (33 percent slope represents a rise to run ratio equal to 1:3); and
 - 2. The placement of large wood on the bank is allowed below ordinary high water to provide bank stabilization.
- D. All vegetation planted must be native and on the *Portland Plant List*.
- F. Permanent structures are not allowed as part of the resource enhancement.

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33.595.380 Standards for Rights-of-Way

This standard is intended to allow the construction of a public or private right-of-way to provide access from the end of North Hayden Island Drive into the proposed Marine Terminal site. Limitations on distance and location preclude it from being used in internal areas of the island.

33.595.385 Standards for Outfall Pipes and Associated Structures

This section lays out the standards for outfall pipes that may be necessary to handle stormwater with the development. The amount of linear disturbance for all of these facilities and associated structures such as riprap or rock armoring is limited to 120 feet in the plan district.

33.595.390 Standards for Tree and Vegetation Removal

This section works in conjunction with the previous Environmental Development Standards to ensure that trees removed as part of any of the applicable projects covered under the standards provide replacement trees and vegetation within the plan district. The tree and vegetation ratio is sufficient to maintain a full canopy forest for the future in the area of the replanting.

The figure providing an example planting plan is located earlier in the chapter under the OS Setback vegetation replacement subsection.

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33.595.380 Standards for Rights-of-Way

The following standards apply to new and existing rights-of-way. All of the following standards must be met. Modification of any of these standards requires approval through a West Hayden Island Resource Review.

- A. The paved roadway may not be greater than 40 feet wide and the right-of-way may not be more than 1,000 feet long;
- B. The disturbance area associated with the right-of-way may not be greater than 60 feet wide;
- C. The improved right-of-way provides access from Hayden Island Drive to the area of the plan district that is zoned IH, or to parking associated with a trail or interpretive facility; and
- D. The standards of 33.595.390, Tree and Vegetation Removal, must be met.

33.595.385 Standards for Outfall Pipes and other Structures Associated with an Outfall Pipe

The following standards apply to the installation of outfalls pipes. All of the standards must be met. Modification of any of these standards requires approval through West Hayden Island Resource Review.

- A. The total width of all outfall pipes, supporting structures, and rock armoring associated with the outfall pipe within the plan district may not exceed than 120 feet
- B. Each outfall pipe may not be greater than 48 inches in diameter; and
- C. The standards of 33.595.390, Tree and Vegetation Removal, must be met.

33.595.390 Standards for Tree and Vegetation Removal.

The following standards apply to tree and vegetation removal. All of the standards must be set. Modification of any of these standards requires approval through West Hayden Island Resource Review.

- A. Trees and vegetation may be removed in conjunction with development and exterior improvements approved under the standards of sections 33.595.360 to 33.595.385 as follows:
 - 1. within the disturbance area for utility lines and outfall pipes;
 - 2. within the disturbance area of a trail or viewing area;
 - 3. within 10 feet of structures, parking areas or a right-of-way;
 - 4. within the disturbance area of driveways; and
 - 5. within resource enhancement areas.

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33.595.390 Standards for Tree and Vegetation Removal (contd)

West Hayden Island Resource Review

The following pages provide the application requirements, procedures and approval criteria for the West Hayden Island Resource Review. The layout and process closely follow the form of the environmental review process for environmental overlay zones.

33.595.400 Purpose

The purpose of the resource review is stated in this section. The purpose of this review is very similar to the purpose for an environmental review.

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- B. Vegetation Replacement.** Trees larger than 6 inches in diameter that are removed must be replaced and must meet all of the following:
1. Replacement planting is based upon the total caliper inches of trees larger than 6 inches diameter that are removed. For every 6 inches of diameter removed, a 100 square foot area must be planted with the following plant density. See Figure 595-1, Example Planting Plan:
 - a. One tree, five shrubs, and four other plants are required to be planted for every 100 square feet of vegetated area. Trees may be clustered; or
 - b. One tree and five shrubs are required to be planted for every 100 square feet of vegetated area, and the planting area must be seeded with a native grass and forb seed mix at a ratio of 30 pounds per acre. Trees may be clustered.
 2. When more than 3 trees are planted, the planting includes at least 3 different tree species and 3 different shrub species; and
 3. Vegetation planted must be native and listed on the *Portland Plant List*.
- C.** Temporary disturbance areas must be replanted so that the area achieves a 90 percent vegetation cover within one year and vegetation planted must be native and listed on the *Portland Plant List*.

West Hayden Island Resource Review

33.595.400 Purpose

West Hayden Island Resource Review is intended to:

- A.** Prevent harm to identified resources and functional values, compensate for unavoidable harm, and ensure the success of mitigation and enhancement activities;
- B.** Provide a mechanism to modify the development standards of this Chapter if the proposed development can meet the purpose of these regulations;
- C.** Provide flexibility for unusual situations. The review provides for consideration of alternative designs for development that have the least impact on natural resource within the environmental sub-districts;
- D.** Provide for the replacement of resources and functional values that are lost through violations of this Chapter; and
- E.** Help the City meet existing and future requirements pursuant to federal and state laws including the Clean Water Act, the Safe Drinking Water Act, the Endangered Species Act, the Migratory Bird Treaty Act, and the National Flood Insurance Act.

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33.595.402 When West Hayden Island Resource Review is Required

A Resource Review will be required for any development that is either not exempt, or can't meet the development standards listed in the previous sections.

33.595.405 Procedure

In general, a Resource Review will be a Type II process, which is a public discretionary process that involves a staff decision for approval or denial, that can be appealed to a public hearing with the City Hearing's Officer. Resource Enhancement projects will be processed under a Type I process which is a similar public discretionary process to the Type II process, but is only appealable to the State Land Use Board of Appeals.

33.595.410 Supplemental Application Requirements

This section lists the additional information that is needed to apply for a Resource Requirement. The intent is to give staff adequate information to complete a WHI Resource Review. Much of this section is the same as the requirements for an Environmental Review.

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33.595.402 When West Hayden Island Resource Review is Required

West Hayden Island Resource Review is required for all development that is not exempt or does not meet the development standards of Sections 33.595.345 through .390, and for violations of this chapter.

33.595.405 Procedure

West Hayden Island Resource reviews are processed through the following procedures:

- A. Resource enhancement projects are processed through the Type I procedure.
- B. All other uses and development are processed through the Type II procedure.

33.595.410 Supplemental Application Requirements

In addition to the application requirements of Section 33.730.060, the following information is required for a West Hayden Island Resource Review application:

- A. **Supplemental site plan requirements.** One copy of each plan must be at a scale of at least one inch to 100 feet. Site plans must show existing conditions, conditions existing prior to a violation, proposed development, and construction management. A mitigation site plan is required whenever the proposed development will result in unavoidable significant detrimental impact on the identified resources and functional values. A remediation site plan is required whenever significant detrimental impacts occur in violation of the Code and no permit was applied for. The Director of BDS may waive items listed in this subsection if they are not applicable to the specific review; otherwise they must be included. Additional information such as wetland characteristics or soil type may be requested through the review process.

1. Site plans must show the following:
 - a. In areas of the site that have been or will be disturbed, or within 50 feet of the disturbance area:
 - (1) 100-year floodplain and floodway boundaries;
 - (2) The ordinary high water line of the Columbia River and Oregon Slough as determined in accordance with the US Army Corp of Engineers definition and protocol;
 - (3) For in-water work, water depth, and shallow water habitat, which is defined as the area between the ordinary high water mark and elevation -14 feet (NAVD88), [as determined in accordance with the US Army Corp of Engineers definition and protocol](#);
 - (4) Topography shown by contour lines at two-foot vertical contours in areas of slopes less than ten percent and at five-foot vertical contours in areas of slopes ten percent or greater;
 - (5) Drainage patterns, using arrows to indicate the direction of major drainage flow;

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33.595.410 Supplemental Application Requirements (contd)

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- (6) Existing improvements such as structures, or buildings, utility lines, fences, etc.;
 - (7) Distribution outline of shrubs and ground covers, with a list of most abundant species;
 - (8) A grading plan showing proposed alteration of the ground at two-foot vertical contours in areas of slopes less than ten percent and at five foot vertical contours in areas of slopes ten percent or greater; and
 - (9) Trees greater than six inches in diameter, identified by species. In the case of violations also indicate those that were cut or damaged by stump diameter and species.
- b. In areas of the site that are and will remain undisturbed: Tree crown cover outline, and generalized species composition.
2. A construction management site plan including:
 - a. Areas that will be disturbed, including equipment maneuvering areas;
 - b. Areas where existing topography and vegetation will be left undisturbed;
 - c. Location of site access and egress;
 - d. Equipment and material staging and stockpile areas;
 - e. Erosion control measures; and
 - f. Measures to protect trees and vegetation.
 3. A mitigation or remediation site plan including:
 - a. Dams, weirs, or other in-water structures;
 - b. Distribution outline, species composition, and percent cover of ground covers to be seeded or planted;
 - c. Location, species, and size of each tree to be planted;
 - d. Stormwater management features, including retention, infiltration, detention, discharges, and outfalls;
 - e. Water bodies to be created, including depth;
 - f. Water sources to be used, including volumes; and
 - g. Information showing compliance with Section 33.248.090, Mitigation and Restoration Plantings.

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33.595.410 Supplemental Application Requirements (contd)

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B. Supplemental narrative. The following is required:

1. Impact evaluation. An impact evaluation is required to determine compliance with the approval criteria and to evaluate development alternatives. The alternatives must be evaluated on the basis of their impact on the resources and functional values of the site. In the case of a violation, the impact evaluation is used to determine the nature and scope of the significant detrimental impacts. The evaluation must also consider the cumulative impacts on that system. The impact evaluation is based on the resources and functional values identified as significant in the *Hayden Island Natural Resources Inventory (HINR)*.
 - a. An impact evaluation includes:
 - (1) Identification, by characteristics and quantity, of the resources and their functional values found on the site;
 - (2) Evaluation of alternative locations, design modifications, or alternative methods of development to determine which options reduce the significant detrimental impacts on the identified resources and functional values of the site; except that an evaluation of alternative off-site locations is not required for docks, dock ramps, cargo conveyors, and associated armoring; and
 - (3) Determination of the alternative that best meets the applicable approval criteria and identify significant detrimental impacts that are unavoidable.
 - b. An impact evaluation for a violation includes:
 - (1) Description, by characteristics and quantity, of the resources and functional values on the site prior to the violation; and
 - (2) Determination of the impact of the violation on the resources and functional values.
2. Construction management plan. Identify measures that will be taken during construction or remediation to protect the remaining resources and functional values at and near the construction site and provide a description of how undisturbed areas will be protected. For example, describe how trees will be protected, erosion controlled, construction equipment controlled, and the timing of construction; and
3. Mitigation or remediation plan. The purpose of a mitigation or remediation plan is to compensate for unavoidable significant detrimental impacts that result from the chosen development alternative or violation as identified in the impact evaluation. A mitigation or remediation plan includes:
 - a. Resources and functional values to be restored, created, or enhanced on the mitigation or remediation site;
 - b. Documentation of coordination with appropriate local, regional, special district, state, and federal regulatory agencies;
 - c. Construction timetables;
 - d. Operations and maintenance practices;

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33.595.420 Approval Criteria

There are three sets of approval criteria that are intended to apply to any development on WHI that needs to go through a Resource Review.

The majority of these proposals would need to meet the General Criteria which are intended to minimize the impact to resources, ensure the least amount of detrimental impact, and to provide mitigation to compensate for any detrimental impact. Mitigation should be on West Hayden Island unless it is unfeasible.

A Resource Enhancement proposal that undergoes review need to meet a smaller number of approval criteria that ensure that resources are maintained and there is an improvement in at least one function value.

A Correction to a Violation must meet a set of remediation approval criteria in addition to all the general approval criteria. However, it should be noted that certain corrections may be able to meet the standards stated in 33.595.500 -.505 and avoid going through a land use review.

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- e. Monitoring and evaluation procedures;
- f. Remedial actions for unsuccessful mitigation; and
- g. Information showing compliance with Section 33.248.090, Mitigation and Restoration Plantings.

33.595.420 Approval Criteria

A West Hayden Island Resource Review application will be approved if the review body finds that the applicant has shown that all of the applicable approval criteria are met. When West Hayden Island Resource Review is required because a proposal does not meet one or more of the development standards in Sections 33.595.360 through .390, the approval criteria will be applied only to the aspect of the proposal that does not meet the development standard or standards.

- A. General Criteria.** The following approval criteria apply to all development except resource enhancement projects and corrections to violations. The applicant's impact evaluation must demonstrate that all of the following are met:
1. Proposed development minimizes the loss of resources and functional values, consistent with the uses that are permitted or allowed within the West Hayden Island plan district;
 2. Proposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values of other practicable and significantly different alternatives including alternatives outside the West Hayden Island Plan District. An evaluation of alternative off-site locations is not required for docks, dock ramps, cargo conveyors, and associated armoring;
 3. Forest fragmentation has been minimized.
 4. There will be no significant detrimental impact on the function of shallow water habitat and near-shore areas for the migration, rearing, feeding, or spawning of fish.
 5. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed, including mitigation sites in the plan district;
 6. The mitigation plan must demonstrate that all significant detrimental impacts on identified resources and functional values, and the interim loss of functional value will be compensated for. The amount of mitigation due as compensation will be based on the amount and relative condition of the resources and functional values impacted by the proposal, the extent to which the project design minimizes impacts, the uniqueness of the resources and functional values, and the time lag between when the resources and functional values are lost due to the impacts and the point when the mitigation site will achieve full function. To the extent practicable, the resources and functional values restored or enhanced as mitigation must be the same kind of resource, performing the same functional value as the lost resource;

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33.595.420 Approval Criteria (contd)

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7. Mitigation must occur within the West Hayden Island Plan District when practicable, and ecologically beneficial. Factors to be considered when evaluating this criterion include:
 - a. The potential for the long-term success of the restored resources and functional values in the mitigation area;
 - b. The amount, size, shape, and connectivity potential of on-site mitigation areas;
 - c. The location of the mitigation area in relation to existing, proposed or future development on the site, and the impact development may have on the mitigation area;
 - d. Contamination; and
 - e. Any other site-specific issue or constraint.
 8. In cases where the proposal is subject to mitigation as the result of obtaining permits from the Oregon Department of State Lands or the U.S. Army Corps of Engineers, the mitigation required for those permits can count toward meeting this mitigation requirement as long as that mitigation is found to adequately compensate for impacts to the identified natural resources and functional values.
 9. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.
 10. If other regulatory approvals have been obtained from the Oregon Department of State Lands or the U.S. Army Corps of Engineers, the conditions of approval for this review must not contradict, circumvent or otherwise undermine decisions made by those agencies.
- B. Resource Enhancement Projects.** Resource enhancement projects will be approved if the applicant's impact evaluation demonstrates that all of the following are met:
1. There will be no loss of total area devoted to natural vegetation and wildlife habitat;
 2. There will be no significant detrimental impact on any resources and functional values; and
 3. There will be a significant improvement of at least one functional value.
- C. Corrections to Violations.** For corrections to violations of the environmental standards of this Chapter the application must meet all applicable approval criteria stated in subsections A and B above, and paragraphs 1, 2.b and 2.c, below. If these criteria cannot be met, then the applicant's remediation plan must demonstrate that all of the following are met:
1. The remediation is done in the same area as the violation; and

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33.595.430 Performance Guarantees

This language provides the opportunity for the Bureau of Development Services (BDS) to require a performance guarantee to ensure completion of any mitigation.

33.595.440 Special Evaluation by a Professional

This criteria provides a reviewer with BDS to request expert consulting advice to aid the review of a proposal in special circumstances.

33.595.450 Modifications That Will Better Meet West Hayden Island Resource Review Requirements

This criterion is similar to criteria within environmental zones and allows an applicant to request a modification to a development standard if it better protects the natural resources. It cannot be used to modify the environmental development standards stated earlier in the chapter, nor can it be used to modify any use standards.

Corrections to Violations of the Environmental Regulations of this Chapter

These provisions are similar to the standards to correct violations in environmental zones, and clarify the procedure for correcting various scales of violations. The menu approach allows alternatives to a land use review to resolve violations, especially those of a smaller scale that would benefit from quick corrective response rather than being part of a longer land use review process.

33.595.500 Purpose

The purpose for these options is provided here.

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2. The remediation plan demonstrates that after its implementation there will be:
 - a. No permanent loss of any type of resource or functional value;
 - b. A significant improvement of a least one functional value; and
 - c. There will be minimal loss of resources and functional values during remediation until the full remediation program is established.

33.595.430 Performance Guarantees

The Director of BDS may require performance guarantees as a condition of approval to ensure mitigation or remediation. See Section 33.700.050, Performance Guarantees.

33.595.440 Special Evaluation by a Professional

A professional consultant may be hired to evaluate proposals and make recommendations if the Director of BDS finds that outside expertise is needed due to exceptional circumstances. The professional will have expertise in the specific resource or functional value or in the potential adverse impacts on the resource or functional value. A fee for these services will be charged to the applicant in addition to the application fee.

33.595.450 Modifications That Will Better Meet West Hayden Island Resource Review Requirements

The review body may consider modifications for site-related development standards as part of the West Hayden Island Resource Review process. These modifications are done as part of the West Hayden Island resource review process and are not required to go through the adjustment process. Adjustments to use-related development standards (such as intensity of use, size of the use, or concentration of uses) are subject to the adjustment process of Chapter 33.805. In order to approve these modifications, the review body must find that the development will result in greater protection of the resources and functional values identified on the site and will, on balance, be consistent with the purpose of the applicable regulations.

Corrections to Violations of the Environmental Regulations of this Chapter**33.595.500 Purpose**

The purpose of Sections 33.595.500 and .505 is to ensure the timely restoration and remediation of natural resources and functional values that have been degraded due to a violation of this chapter. These sections establish a process to determine which review requirements will be applied to remedy a violation of the environmental standards in the West Hayden Island Plan District. The type of review required depends on the circumstances of the violation. Section 33.595.505 details methods for correcting such violations and Title 3 of the City Code details the enforcement penalties.

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33.595.505 Correction Options

This section spells out the various options for correcting a resource violation. Certain violations may allow for either removing the violation and repairing the damage, retaining the development subject to the violation and meeting a set of mitigation standards, or going through a land use review. In order to use these options, the applicant must show that the violation and resulting corrections meet a set of threshold detailed below. If those thresholds cannot be met, the applicant must go through the land use review, and meet the approval criteria listed in the above section.

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33.595.505 Correction Options

Applicants must choose one of the following options to correct environmental code violations.

A. When these options may be used.

1. If all of the following are met, the applicant may choose Option One, Option Two, or Option Three:
 - a. No more than 12 diameter inches of trees were removed; and
 - b. No ground disturbance occurred riverward of the ordinary high water line of the Columbia River or Oregon Slough, or within 30 feet of the top of bank of a stream, wetland or other water body;
 - c. The correction will remove all illegal development; and
 - d. The correction will replant illegal clearing.
2. If any of the following occurred, the applicant may not use Option One, but may chose either Option Two or Option Three:
 - a. More than 12 diameter inches of trees were removed;
 - b. Disturbance occurred riverward of the ordinary high water line of the Columbia River or Oregon Slough, or within 30 feet of the top of bank of a stream, wetland or other water body;
3. If the applicant cannot meet Options One or Two, Option Three must be used.
4. If the violation also violates a condition of approval of a land use review, the applicant must use the process described in Section 33.730.140. The applicant may not choose one of the options in this section.

B. Option One, Remove and Repair. This option results in removal of illegal development and replanting and repair of any damage. All of the requirements of this subsection must be met. Adjustments and modifications to these requirements are prohibited.

1. All items and materials placed in the area of violation are removed and no new disturbance area is created;
2. Any soil compaction resulting from the violation is tilled or otherwise broken up to a depth of 6 inches prior to planting; and
3. Violation remediation planting. The area to be planted is the area disturbed by the violation. All of the following must be met:
 - a. The area disturbed by the violation activity must be replanted;
 - b. One tree, one shrub, and five groundcover plants are required to be planted for every 50 square feet of planting area. Plants must be native and selected from the *Portland Plant List*;

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- c. A second area, equal in size to the area disturbed by the violation activity, must also be replanted as remediation, or seven additional plants as described in B.3.b must be planted on the site for every 50 square feet disturbed;
 - d. Any Nuisance or Prohibited Plants listed on the *Portland Plant List* must be removed from the planting area and within 10 feet of the planting area;
 - e. Trees must be a minimum one inch in diameter. Shrubs must be a minimum of two-gallon size. All other species must be a minimum of four-inch pots; and
 - f. The requirements of Section 33.248.090, Mitigation and Restoration Planting, must be met.
4. For violations involving the removal of trees, two times the number of diameter inches removed must be planted on the site, in addition to other remediation vegetation planted. Planted trees must be a minimum one inch in diameter.
- C. Option Two, Retain and Mitigate.** This option results in legalizing the illegal development and mitigating for any damage. All of the requirements of this subsection must be met. Adjustments and modifications to these standards are prohibited.
- 1. The applicable standards of Chapter 33.595.xxx must be met; and
 - 2. Violation remediation planting. The area to be planted is the area disturbed by the violation. Where development is approved for the area disturbed by the violation, an area of the same size elsewhere on the site must be planted. All of the following must be met:
 - a. The area disturbed by the violation activity must be replanted;
 - b. One tree, one shrub, and five groundcover plants are required to be planted for every 50 square feet of planting area. Plants must be native and selected from the *Portland Plant List*;
 - c. A second area, equal in size to the area disturbed by the violation activity, must also be replanted as remediation, or seven additional plants as described in C.2.b must be planted on the site for every 50 square feet disturbed;
 - d. Any Nuisance or Prohibited Plants listed on the *Portland Plant List* must be removed from the planting area and within 10 feet of the planting area;
 - e. Trees must be a minimum one inch in diameter. Shrubs must be a minimum of two-gallon size; and
 - f. The requirements of Section 33.248.090, Mitigation and Restoration Planting, must be met.
 - 3. For violations involving the removal of trees, two times the number of diameter inches removed must be planted on the site, in addition to other remediation vegetation planted. Planted trees must be a minimum 1 inch in diameter.
- D. Option Three, West Hayden Island Resource Review.** The procedures, application requirements, and approval criteria for West Hayden Island Resource Review are described in Sections 33.595.400 through .450.

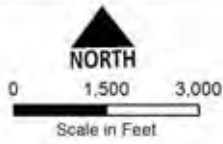
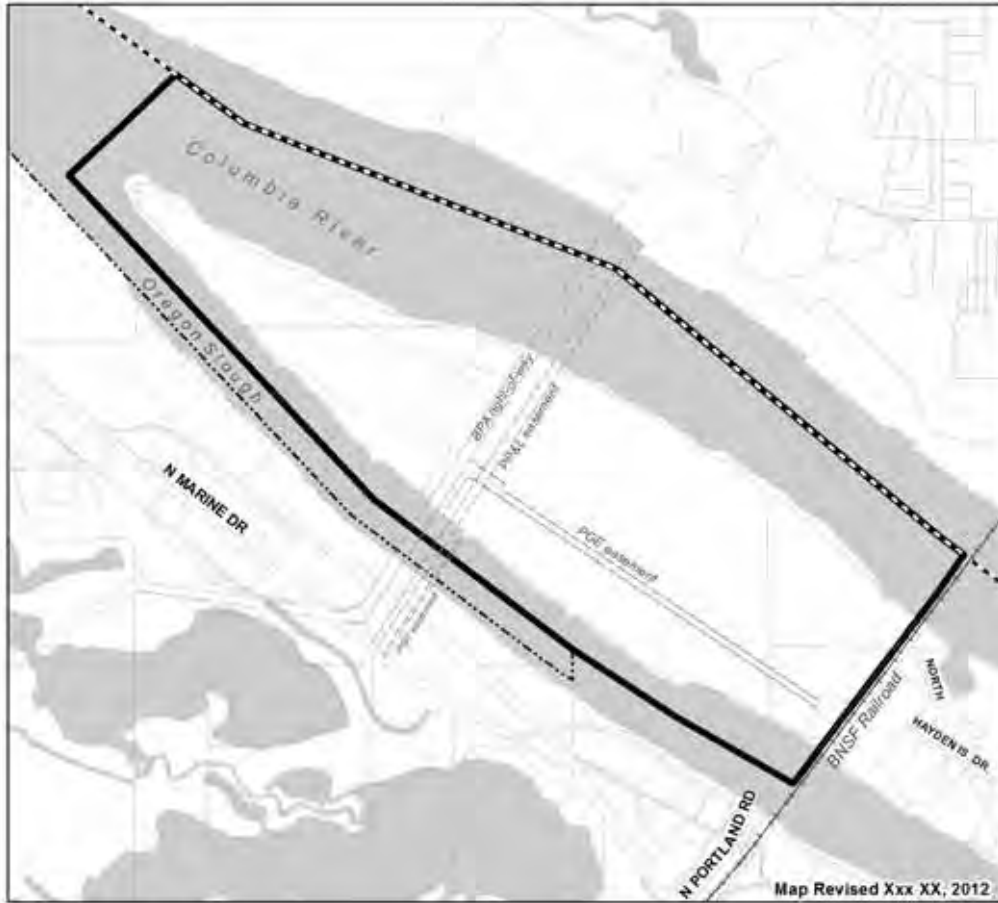
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Map 595-1

Map of the West Hayden Island plan district

This map provides an illustration of the boundaries of the West Hayden Island plan district, including the location of the existing utility lines.

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-  Plan District Boundary
-  State Boundary
-  City Boundary

Map 595-1

Proposed West Hayden Island Plan District

Bureau of Planning & Sustainability - City of Portland, Oregon

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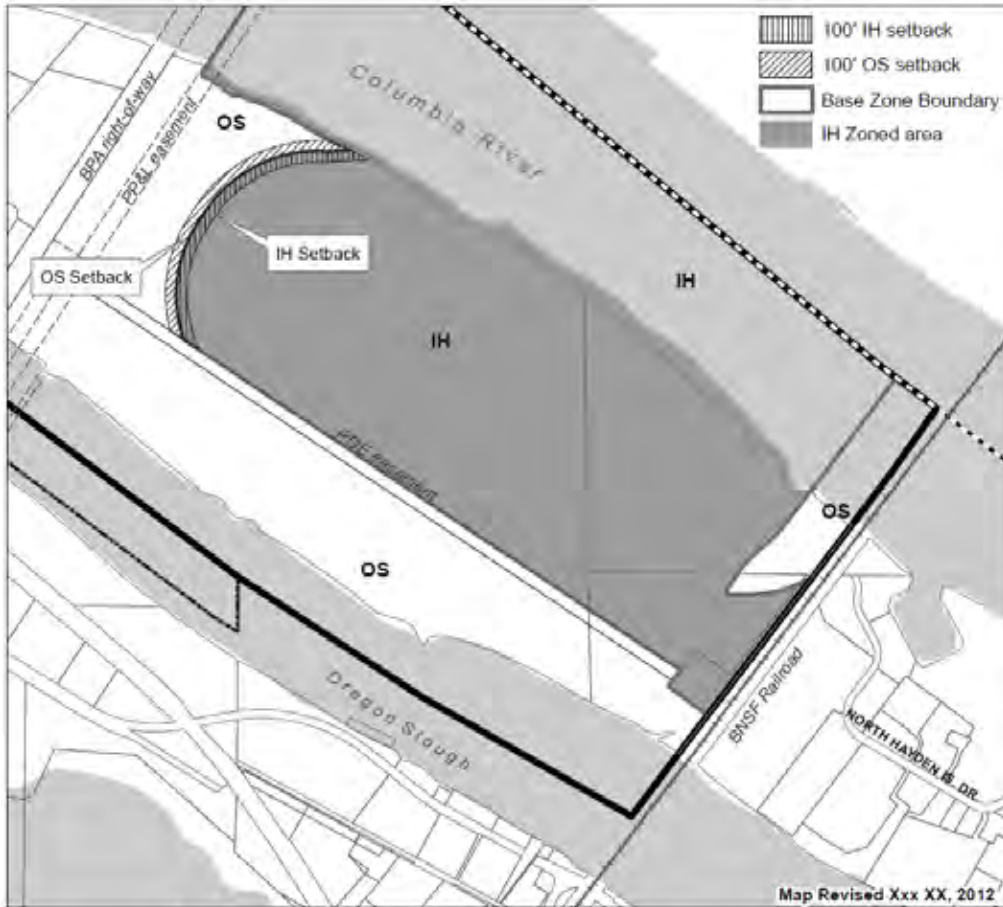
Map 595-2

West Hayden Island plan district - Open Space Setback Area

This map illustrates the different setback areas between the terminal in the IH zone and the Open Space zone west of the terminal. The map is intended to be used with sub-section 33.595.200.B.

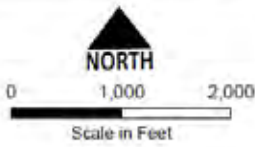
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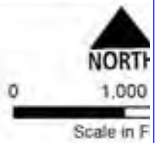
Map 595-2



- Plan District Boundary
- State Boundary
- City Boundary

**Proposed West Hayden Island
Plan District
Open Space Setback Area**

Bureau of Planning & Sustainability - City of Portland, Oregon



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- State Boundary
- City Boundary

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VI. Intergovernmental Agreement (IGA) between the Port and the City

The purpose of the agreement is to describe transportation improvements, community and recreational investments, and environmental mitigation measures that the Port and the City agree to undertake if West Hayden Island is annexed to the City and developed with a port facility.

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**INTERGOVERNMENTAL AGREEMENT FOR
ANNEXATION OF WEST HAYDEN ISLAND**

This INTERGOVERNMENTAL AGREEMENT FOR ANNEXATION OF WEST HAYDEN ISLAND (Agreement) signed and effective _____, 2012 (Effective Date) is between **THE PORT OF PORTLAND**, a port district of the State of Oregon (Port), and **THE CITY OF PORTLAND, OREGON**, a municipal corporation (City) (collectively the Parties).

RECITALS

A. The Port and the City are authorized to enter into intergovernmental agreements with each other pursuant to the terms of ORS 190.003 to 190.010.

B. The Port and the City entered into an *Intergovernmental Agreement West Hayden Island Land Use Approvals Work Program and Tasks*, effective May 29, 2009 and amended on June 9, 2010, December 3, 2010, and October 7, 2011.

C. West Hayden Island (WHI) is that portion of Hayden Island lying westward of the Burlington Northern Railroad right of way, comprising approximately 800 acres. The property is shown on the Map included as Attachment A. WHI is located in Multnomah County and is zoned County Multiple Use Forest 19 (MUF19) with a Significant Environmental Concern (SEC) overlay.

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D. The Port acquired much of WHI in 1994, for the purpose of marine terminal development.. The Port property includes a dredge material management area approximately 100 acres in size. Existing improvements include a City waste water outfall, right-of-way, easements and electric transmission lines, and a substation on PGE property, but otherwise WHI is largely undeveloped.

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E. The Metropolitan Service District (Metro) included WHI within the Metro Urban Growth Boundary (UGB) in 1983 for the purpose of satisfying a regional need for marine terminal facilities (Metro Ordinance No. 83-151). Anticipating eventual annexation of WHI, since 1996 the City has provided planning and zoning services to WHI through an Intergovernmental Agreement with Multnomah County (Ordinance No. 170585). In 1995 Metro’s Urban Growth Concept Plan and Map identified the northern half of the island as industrial and southern half as open space.

F. On July 29, 1998 the Portland City Council adopted a resolution in response to the Endangered Species Act listing of the steelhead, stating that “the City will work proactively to the best of its ability, through regulatory compliance, creation of incentives, and otherwise, to support the recovery of steelhead populations” (Resolution #35715).

G. Metro’s previous planning decisions recognize WHI’s value for both industrial development and natural resource protection. In 2004, Metro designated WHI as a “Regionally Significant Industrial Area” under Title 4 of Metro’s Urban Growth Management Functional Plan (Functional Plan) (Metro Ordinance 04-104B). In 2005 Metro adopted its Nature in the Neighborhoods program to implement Title 13 of the Functional Plan and a regional approach to Statewide Planning Goal 5 for fish and wildlife habitat (Metro Code (MC) 3.07.1320). Nature in the Neighborhoods requires the City and the Port to create a District Plan for WHI (MC

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3.07.1330.B.4.b). Metro also exempted much of the WHI property from Title 3 (Water Quality and Flood Management) of the Functional Plan (MC 3.07.330.D).

H. On August 19, 2009 the Portland City Council adopted the Hayden Island Plan (Ordinance 183124). The plan was a collaborative effort between the City and the community, to improve accessibility, livability, and sustainability on Hayden Island over the next 35 years. Goal "j" of the plan provides direction to develop a plan for West Hayden Island..

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I. To facilitate the development of a District Plan for the WHI property, the Port is requesting annexation of the entire 800-acre parcel that comprises WHI.

J. On July 29, 2010, the City Council approved Resolution No. 36805, directing the Bureau of Planning and Sustainability (BPS) staff to develop a legislative proposal for annexation of WHI to the City with the intent to retain at least 500 acres as open space, and to identify no more than 300 acres for future deep-water marine terminal development.

K. Public Involvement has been an integral part of the West Hayden Island planning process. The Bureau of Planning and Sustainability produced a public involvement plan to guide and encourage participation and input from multiple stakeholders and the general public. Since 2009 the City and Port have worked collaboratively with a Community Working Group (CWG) and a WHI Advisory Committee (WHIAC). These committees have provided guidance and input on technical studies and advised the City and Port on all project activities.

L. The City completed the Hayden Island Natural Resources Inventory (HINRI) in 2012, which identifies the existing natural resource features and functions provided by WHI. WHI is a single habitat area, comprised of a mosaic of habitat types, located at the confluence of two major rivers systems, along the migration route for salmon, and in the Pacific Flyway. The WHI planning area includes the Columbia River and Oregon Slough, shallow water habitat, beaches, grassy and sparsely vegetated areas, shrubland, woodland and forest habitat all of which are located within the 100-year floodplain. These habitat features support over 200 species of wildlife including 13 federally-listed ESA fish species and several at-risk species such as western meadowlark, pileated woodpecker, bald eagle, red-legged frog and myotis. The HINRI forms the basis for the evaluation of potential development impacts and actions taken in this agreement to replace or compensate for lost environmental features and ecological functions. The HINRI will be adopted as part of the West Hayden Island Plan District to support environmental regulations.

M. The City is undergoing state-mandated Periodic Review of its Comprehensive Plan. As part of Periodic Review, the City is required to complete an Economic Opportunities Analysis (EOA) to comply with Oregon Statewide Planning Goal 9 and its implementing administrative rule. The City City Council adopted an EOA [date, ordinance #] and submitted it to the Department of Land Conservation and Development for acknowledgement of compliance with the statewide planning goals, including Goal 9.

N. The EOA evaluates the types and amounts of employment land needed to accommodate expected growth to 2035. The EOA estimates there is demand for 450 additional acres of vacant land in the Portland Harbor for river related and river dependent employment. The City's Buildable Lands Inventory (BLI) identified an effective available vacant land supply of 94 acres in the Portland Harbor. This leaves a projected deficit of 356 acres. The EOA states that "West Hayden Island represents the only significant opportunity to bring new capacity into Portland industrial land supply, especially for marine terminal use."

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O. The Oregon Freight Plan documents the economic importance of freight movement in Oregon, identifies transportation networks important to freight-dependent industries and recommends multimodal strategies to increase strategic freight system efficiency. Among other things, it calls for the development of best practices for integrating freight movement and land uses in urban areas. This will be done in a way that minimizes the impact on surrounding neighborhoods and the natural environment.

P. The Portland City Council recently adopted the Portland Plan (Resolution #39618) which sets short and long-range goals for the City and establishes a core set of priorities: prosperity, education, health, and equity. The prosperity and affordability strategy emphasizes expanding regional exports, increasing traded sector competitiveness, investment in freight transportation systems, and planning for an adequate industrial land supply. The Portland Plan also emphasizes the importance of securing more stable funding for education, considering human and ecological health, and improving access to nature. Above all, the Portland Plan prioritizes actions to improve equity and reduce disparity among Portlanders.

Q. Within the area subject to annexation, The Port and City have identified approximately 280 acres for development of marine terminal facilities, which includes areas identified as Special Habitat Area in the City's HINRI (zoning maps enclosed as Attachment B). Based upon the Economic, Social, Environmental and Energy (ESEE) analysis the City conducted in compliance with Statewide Planning Goal 5, the City recommends an “allow” decision for the marine terminal development area of WHI and “limit” and “strictly limit” decisions for the remaining area Open Space area. These designations are intended to balance the natural resource values and economic values of the WHI area as a whole.

R. The City supports the Ports desire to use unencumbered portions of West Hayden Island to meet Natural Resources Damages Assessment requirements.

S. Contemporaneous with approving this agreement the City Council is adopting ordinances annexing WHI into the City, applying Comprehensive Plan and zoning designations to WHI, adopting zoning code (Plan District) regulations for WHI, and amending its Transportation System Plan. Heavy Industrial (IH) zoning will be applied to the marine terminal area (the IH Area), and Open Space (OS) zoning will be applied to the remaining area of WHI.. North Hayden Island Drive will be re-classified as a Major Truck Street, consistent with its function as a connector between a proposed major intermodal freight facility with Interstate 5.

T. The purpose of this Agreement is to: (a) describe specific transportation improvements, community and recreational investments, and voluntary natural resource enhancement measures that the Port and the City agree will advance a shared vision for the future of WHI (which includes both open space and maritime related industrial activity);(b) describe steps that will be taken to implement this shared vision; (c) provide the Port with regulatory certainty regarding WHI development; and (d) provide the City and the metropolitan community with certainty regarding the transportation improvements, community and recreation investments, public involvement and natural resource enhancement measures contained in this Agreement.

U. The Port and City have cooperated to develop information necessary to support the City's natural resources program update. The City has prepared the Natural Resources Inventory and ESEE analysis of WHI area properties, including Port-owned properties, which will support the comprehensive plan and zoning designations to be applied to WHI.

NOW, THEREFORE, in consideration of the promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Port and the City agree as follows.

AGREEMENT

1. RECITALS

The Recitals above are true and are incorporated into and are a part of this Agreement.

2. TERM

This Agreement shall be effective for twenty-five (25) years following the Effective Date unless extended by mutual agreement as provided herein. Notwithstanding any other deadlines described herein, the Port's obligations set forth in this Agreement are contingent upon: (a) Port Commission acceptance; (b) City Council's adoption of zoning map, zoning code (Plan District), and Comprehensive Plan amendments consistent with this Agreement; (c) Department of Land Conservation and Development (DLCD) acknowledgment of land use amendments described in (b); and (d) the final resolution of any appeals of land use amendments described in (b).

2.1 Review of Agreement on Expiration; Possible Extension; Continuing Obligations

The Port and the City agree to meet within the month falling one year preceding the expiration of this Agreement to comprehensively review accomplishments, and to discuss whether the term of the Agreement should be extended, revised on mutually agreeable terms, or allowed to expire. Certain continuing obligations are described herein and listed in Section 7.4

3. INFRASTRUCTURE DEVELOPMENT: TRANSPORTATION, RECREATION, AND SEWER & WATER SYSTEMS

3.1 Transportation Improvements

3.1.1 By July 1 2013 the Port will, in consultation with the City (Portland Bureau of Transportation – PBOT), prepare and seek amendments to the Regional Transportation Plan (RTP) Project List. The amendments will include removing the West Hayden Island Bridge (Metro ID# 10343) from the RTP Financially Constrained project list and replacing it with a project to reconstruct North Hayden Island Drive consistent with its proposed freight classification, from BNSF Railroad Bridge to the I-5/Hayden Island interchange anticipated with the Columbia River Crossing Project (CRC). The N. Hayden Island Drive improvement project will be designed to accommodate tractor-trailers, passenger vehicles, bicycles and pedestrians. As an example, Attachment C depicts a design that accommodates all modes. Buffering treatments will also be considered during a public street project development design process for residential property abutting N. Hayden Island Drive to mitigate roadway noise. The main entrance to the Hayden Island Manufactured Home Park will remain in its current location unless a land use action significantly changes the traffic generation of the

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property, or safety conditions warrant consideration of an access location change. A public process will be conducted as part of any potential change of access. Contemporaneous with this agreement the City Council is adopting corresponding amendments to its Transportation System Plan (TSP), which will be submitted to Metro for its review and approval.

3.1.1.1 The Port and City will develop a cooperative funding strategy to support the N. Hayden Island Drive improvement project, pursuant to Section 7.1 of this agreement. The City agrees to contribute one quarter of the project cost, or \$5.25 million, whichever is less. Consideration will be given to a range of design options.

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3.1.1.2 If the N. Hayden Island Drive improvement project is not already complete at the time the Port files an application for a permit, land use approval or other approval with the City for industrial development on WHI, the Port agrees to complete the project prior to occupancy or operation of industrial development on WHI.

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3.1.1.3 If funding is secured, the Port and the City (PBOT) will collaborate to ensure that the N. Hayden Island Drive improvement project is built in a timely manner.

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3.1.1.4 The Port and the City (PBOT) agree to pursue partnerships with local businesses and industrial and commercial property owners on Hayden Island to explore options for forming a local improvement district to support the N. Hayden Island Drive improvement project. Where development or redevelopment occurs along North Hayden Island Drive, the City will, as appropriate and within constitutional limits, require frontage improvements consistent with the street classification. If frontage improvements are waived or delayed, the City will require LID remonstrance waivers.

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3.1.1.5 The Port's obligations to fund and perform the transportation improvements as described in Section 3.1.1 will survive the termination of this Agreement and continue in perpetuity, as described in Section 7.4.

3.1.2 The Port will acquire any rights of way and dedicate any property necessary to extend Hayden Island Drive to the Port property.

3.1.3 Contemporaneous with approving this agreement the City Council is adopting zoning code (Plan District) regulations for WHI which cap the number of heavy trucks using Hayden Island Drive to enter or exit the terminal gate house to 205 each day. The definition of heavy trucks is as defined by City Code. The Port is responsible for documenting and reporting the daily truck traffic volumes in the manner described in Paragraph 7.3.2.

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3.1.4 If the Columbia River Crossing project is not completed prior to terminal development, the City and the Port agree that the Hayden Island Plan (2009) and West Hayden Island traffic impact analysis and associated agreements will require re-evaluation. The City and Port agree to conduct any necessary re-evaluations and to work collaboratively to identify any additional traffic mitigation requirements. This agreement does not commit the City of Portland to any level of funding for transportation improvements beyond the related to the N. Hayden Island Drive improvement project discussed in Section 3.1.1 of this agreement. The benchmark for determining that the CRC Project is "completed" is when the following improvements are physically in place, or when the CRC Project has received all necessary funding authorization to bid, award and completely construct: (a) the local arterial bridge spanning Portland North Harbor, and (b) the Hayden Island light rail facility and station, and (c) the improvements along

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North Hayden Island Drive east of North Main Street and freeway access ramps, as required for the CRC project to be functional and provide multi-modal circulation that meets City of Portland level of service requirements and other applicable City requirements.

3.1.5 The Port will own roads, driveways and access ways serving exclusively the terminal development. The Port will grant public right of ways or easements as the City determines are necessary to facilitate public access to trailheads, recreational parking, and associated recreational improvements.

3.1.6 Construction of a rail line from the BNSF mainline into the WHI site will be necessary to support marine terminal development (Regional Transportation Plan, Freight Priorities Project List, Metro ID # 20018 and 20019). The Parties agree to make a good faith effort to advocate for this freight rail project as a regional priority.

3.1.7 The City and the Port acknowledge that improvement of the North Portland junction (RTP, Freight Priorities Project List, Metro ID # 20010 and 20013) and improvements to the Columbia River rail bridge (Metro ID # 10866), will improve the efficiency of the future marine terminal on WHI. The parties agree to make a good faith effort to advocate for these freight rail projects as a regional priority.

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3.2 Recreation Improvements

3.2.1 The Parties have a mutual interest in improving recreational and open space access on Hayden Island consistent with the goals of marine terminal development and conservation measures described elsewhere in this Agreement and consistent with the Hayden Island Plan (2009). The parties agree to contribute funds to be used for park land acquisition on Hayden Island, and recreational facilities including trails, parking lot, restrooms and overlook development on West Hayden Island as described in Paragraphs 3.2.2.1- 3.2.2.2. The Parties may also cooperate to seek additional funding for these projects listed below or other recreational projects identified by the Advisory Committee established under Paragraph 7.2.2 and endorsed by the Parties.

Deleted: The parties agree to contribute funds to be used for one or more of the projects listed in Paragraph 3.2.2 or other recreational projects identified by the Advisory Committee established under Paragraph 7.2.2 and endorsed by the parties. The parties will contribute funds in the following amounts: \$1 million total from the Port and \$750,000 total from the City, pursuant to Section 7.1.

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3.2.2 The Port's obligation under this paragraph is limited to providing the funding described herein, acquiring property, and providing access to Port property where required. Permitting, design and construction of trail and parks improvements will be the City's responsibility. The allocation of these funds will align with the timeline for the Open Space Strategy as described below and in Paragraph 7.2.1.

Deleted: The Hayden Island community identified the following potential projects during the annexation process. The Parties will select one or more of the projects listed in Paragraphs 3.2.2.1 -3.2.2.5 after obtaining the advice of the Advisory Committee established under Paragraph 7.2.2.

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3.2.2.1 Prior to completion of the Open Space Strategy described in Paragraph 7.2.1, the Port agrees to purchase, and convey at no cost to the City, at least 6 acres of park land within the Hayden Island Neighborhood, east of the BNSF Railroad. Any environmental cleanup and roadway improvements will be the Port's responsibility. The property must be clean at the time of conveyance to the City. The Port agrees to provide \$7.0 million to the City for subsequent parks design, engineering, and capital improvements. \$150,000 of this amount will be available to PP&R for design, engineering and permitting upon receipt of the property, with the remainder available upon completion of permit-ready design drawings. The City agrees to contribute \$1 million toward design and engineering and/or capital improvements.

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3.2.2.2 The Port agrees to provide Portland Parks and Recreation \$1.8 million for recreational trail and trailhead development on WHI consistent with the open space strategy process described in Paragraph 7.2.1 below. This will include trails, a small parking lot, and a comfort station and an overlook as defined on the concept plan, a map of which is enclosed with Attachment D. \$150,000 of this amount will be available to PP&R for design and engineering upon completion of the Open Space Strategy described in Paragraph 7.2.1, with the remainder available upon completion of permit-ready design drawings. If mitigation is required by the permitting agencies for the construction of recreational facilities, the Port will be responsible for providing mitigation, including O&M, and fulfilling all monitoring requirements.

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Develop public trailhead facilities on WHI, or if feasible, on abutting property to the east.

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3.2.3 The Port agrees to provide public access through Port property, as necessary, to recreation facilities built under this section by dedicating property, granting public access easements, or using similar methods, provided that any access granted shall not conflict with marine terminal operations or natural resource conservation measures.

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<#>Develop a small community center with a nature-based, and/or cultural focus on Hayden Island.¶

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3.2.4 When trail, trailhead, and parks construction drawings are complete, the Port agrees to establish and manage a fund or endowment, the earnings on which will be available to Portland Parks and Recreation to cover the ongoing operation and maintenance costs of the future WHI recreational trails, trailhead, and 6 acres of park land described above. The Port will establish this endowment by making an initial lump payment into the endowment for O&M, to be determined on PP&R’s standard O&M methodology. For the trails and trailhead facilities described in Paragraph 3.2.2.2, the lump sum will be at least \$1 million, or enough to cover 10 years of O&M, whichever is larger. For the 6 acres of park land described in Paragraph 3.2.2.1, the lump sum will be at least \$2 million, or enough to cover 10 years of O&M, whichever is larger. The Port will manage the investment of this fund or endowment in accordance with ORS and the Port’s Investment Policy.

Deleted: and amenities, in an amount no less than \$33,500 per Port fiscal year. Port contributions to this fund or endowment shall commence no later than: one year from the date WHI is annexed to the City or; if the annexation is appealed, one year from the date all appeals

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3.3 Sewer and Water System Improvements

3.3.1 Before the City grants occupancy of any marine terminal development, the Port will extend the public sewer main in Hayden Island Drive that is needed to serve the proposed marine terminal development to the site. In addition, the Port is responsible for obtaining a permit for on-site disposal and treatment of stormwater and process water, or providing the necessary upgrades to the City’s system off site as required at the time of development.

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3.3.2 The Port agrees to contract with the Water Bureau to extend water mains required by the proposed terminal development, located on North Hayden Island Drive, to the site.

3.3.3 Any transportation, recreation, sanitary sewer or storm sewer projects conducted by the Port under this agreement shall be eligible for, and receive system development charge (SDC) credits in the manner and to the extent provided by the City’s adopted SDC credit provisions. The credits shall be administered and used consistent with establish City SDC requirements.

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3.3.4 The Port’s obligations to fund and perform the water and sewer improvements as described in this Section will survive the termination of this Agreement and continue in perpetuity, as described in Section 7.4.

4. MEASURES TO IMPROVE ECOSYSTEM VALUES AND FUNCTIONS

4.1 Open Space on WHI

4.1.1 The Port will not use or seek or support rezoning of the OS-zoned area, for any uses inconsistent with the zoning and Plan District regulations applied to WHI at the time of annexation. This commitment will survive the termination of this Agreement and continue in perpetuity unless modified with the consent of the City and a third party, as described in Section 7.4.

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4.1.2 The Port intends to use the OS-zoned portions of WHI for mitigation, conservation, enhancement, natural resource restoration projects and similar uses consistent with the Plan District. While the Plan District specifies allowed uses in the OS zoned area, neither the District nor this Agreement requires the Port to take action in the OS zoned area unless otherwise specifically stated herein.

4.1.3 If the Port has not completed any of the anticipated mitigation, conservation, enhancement, or natural resource restoration projects described in Paragraph 4.1.2 by January 1, 2022, the Port will initiate discussions with the City (Bureau of Environmental Services (BES), Bureau of Planning and Sustainability (BPS) and River’s Office by February 1, 2022 regarding means for accelerating such activities, including but not limited to establishing a mitigation bank on WHI.

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4.1.4 The Port may, at its discretion, transfer ownership of the OS-zoned acreage to another person or entity. In the alternative, the Port may make arrangements with another entity (including but not limited to the City’s Bureau of Parks and Recreation or Metro) to manage some or all of the OS-zoned area in the future. Any subsequent sale of all or a portion of the OS zoned property must be to a public agency or non-profit land trust-like organization, mutually acceptable to the Port and the City, whose mission would be to maintain property protections in perpetuity.

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4.2 Further Natural Resource Consultation and Coordination

4.2.1 Background. The Parties acknowledge that development of marine terminal facilities within the IH-zoned area and the adjoining waterway is an essential element of their shared vision for WHI. Port development of these facilities will be subject to state and federal permitting requirements, such as those required for filling within jurisdictional wetlands, in addition to local permitting and approval requirements. Permits will be obtained by the development sponsor, which may be the Port or some other entity, such as a Port tenant. Marine terminal development will also require compliance with, at a minimum, the National Environmental Policy Act. These permitting processes involve opportunities for public comment, evaluation of alternatives, and evaluation of mitigation for environmental impact.

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4.2.2 Purpose Statement. The Parties intend that (1) State and federal applications for marine terminal facilities development will be based on sound mitigation proposals that are consistent with City environmental regulations; (2) Marine terminal development on WHI will occur in a manner that minimizes environmental impacts and employs state of the art mitigation principles and techniques as required by the permitting agencies; and (3) The Parties will collaborate to advance these purposes.

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4.2.3 Anticipated Impacts. During the annexation process, the City’s consultant, Worley Parsons, developed a conceptual plan for marine terminal facilities. Based on this conceptual plan, the Parties independently analyzed the potential impacts of development on shallow water habitat and wetlands and substantially agree on the extent of those likely impacts. Specifically, the Parties anticipate that approximately 0.3 to 1.5 acres of shallow water habitat and 10 acres of wetlands will be adversely affected by terminal development as currently conceived.

Deleted: <#>Consultation and Coordination. The Port agrees to coordinate and consult with the City in the developing of the final mitigation proposals that will be included in the state and federal permit applications consistent with Paragraphs 4.2.5.1 through 6 below (collectively referred to as Coordination and Consultation). This Coordination and Consultation applies to all state or federal permit applications seeking authorization for development on WHI. “Development” includes rail or marine terminal structures, or related docks and causeways below ordinary high water in the Columbia River. “Permits” include those submitted by entities acting as agents of the Port, or any lessee of Port property on WHI. The Port will notify its agents or lessees of the Coordination and Consultation process, and secure their compliance with this process. ¶ <#>The Port agrees to give the City advance notice of its intent to submit any state or federal permit application for development on WHI as described in Paragraph 18.1- 18.2. The Coordination and Consultation process will begin within 7 days of that notice. ¶ <#>To implement Coordination and Consultation, the Parties agree to form a “Coordination Team” of six (6) people composed of three (3) City appointees, and three (3) Port appointees. The City Mayor will appoint the City members of that team, and the Port Executive Director will appoint the Port members. Entities acting as agents of the Port, or lessees of Port property may be included among the Port members. The Coordination Team will review and approve the final environmental mitigation proposals that will be included in the state and fe... [1]

4.2.4 Minimum Wetland Mitigation Proposal. State and federal authorities will determine the amount and type of mitigation required for the loss of these areas when the Port submits development permit applications. The Port agrees to mitigate for impacts to all wetlands that meet the requirements for hydrology, hydric soils, and hydrophytic plants as specified in the 1987 Corps of Engineers Wetlands Delineation Manual and addendums.

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4.2.4.1 The Port’s mitigation proposal for wetlands will include, at a minimum, 30 acres of wetland restoration or creation. Any wetland enhancement actions would be in addition the minimum 30 acres of wetland restoration or creation.

4.2.4.2 To the extent feasible and permitted by the responsible agencies, the Parties intend that this mitigation will occur on WHI in the vicinity of Benson Pond and the adjacent North Wetland.

4.2.4.3 The monitoring period will be no less than 10 years. In addition to the responsible state and federal agencies, all monitoring reports will be submitted to the City Bureau of Environmental Services.

Deleted: <#>If a majority of the Coordination Team is unable to agree on the mitigation proposals to be included in any necessary state or federal permit applications, the Parties shall rely on the dispute resolution procedures desc... [3]

4.2.4.4 The Parties acknowledge that natural resource conditions, regulations, and ecological science will evolve over the course of this agreement. It is not the intent of this agreement to lock the parties into an inflexible mitigation approach that cannot respond to those changes. The Parties may mutually agree to deviate from the above-listed minimum elements if such changes are necessary to respond to significant changes in regulatory context (for example additional ESA listings), natural resource conditions, or scientific understanding.

4.2.5 Consultation. The Port agrees to consult with the City in the developing of the final mitigation proposals that will be included in the state and federal permit applications

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related to both shallow water habitat and wetlands. The Port will notify its agents or lessees of this consultation process, and secure their cooperation.

4.2.5.1 The Port agrees to give the City advance notice of its intent to submit any state or federal permit application for development on WHI as described in Paragraph 18.1- 18.2.

4.2.5.2 The Parties acknowledge that it is desirable to carry out early informal mitigation-related consultation with state and federal authorities to create a mitigation proposal that will meet federal, state and local regulations. If state and federal regulatory authorities are willing to engage in early informal consultation, the Parties, will make a good faith effort to engage in that informal consultation.

4.2.5.3 The Parties will jointly fund staff time necessary to support consultation for at least 3 months prior to application submittal. The Port agrees to provide the City with draft permit application packages, including mitigation design drawings, Biological Assessments, and any other supporting information the Port intends to submit to permitting agencies.

4.2.6 Notwithstanding all of the above sections, the City reserves all rights to regulate wetlands and in-water habitat pursuant to its obligations under state and federal laws. Further, if the state or federal wetland regulations change significantly prior to Port submittal of any wetland mitigation proposals, it is the intent of the City to update the WHI Plan District zoning code (33.595) to require WHI Resource Review for impacts to wetlands within the IH zone on WHI.

4.3 Improvement of Forest Habitat

Notwithstanding any Goal 5 and ESEE decisions the City makes regarding WHI, the Port agrees to the following actions to improve and enhance forest habitat functions and values, described in Paragraphs 4.3.1 – 4.3.13.

Purpose and Objectives

4.3.1 The purpose of this section is to replace the forest features and functions impacted by marine terminal development on WHI and to create a net improvement in ecosystem functions through additional cottonwood-ash forest re-establishment. Martine terminal development will impact approximately 149 acres of mature cottonwood/ash forest. The impacted forest is between 60 and 100 years old, some trees are as old as 150 years. It is comprised of multi-storied vegetation that is native in the interior and impacted by invasive plants around the edges. There are multiple wetlands within the forest, including at least two that support at-risk red-legged frogs. Red-legged frogs breed in wetlands and live the remaining time

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in the old-growth forest. One wetland, the North Wetland, is hydrologically connected to the Columbia River and provides fish habitat during moderate flood events. The forest also supports bald eagle, pileated woodpecker, and many other at-risk wildlife species.

4.3.2 The objective of the forest re-establishment described in this Section is to create a closed canopy ash-cottonwood native forest with native mid- and understory. The objective of the forest enhancement described in this Section is to remove invasive plant species and maintain a closed canopy ash-cottonwood native forest. The management prescriptions will meet the performance standards as described in Attachment F and will describe site preparation; native species mix and planting densities; understory planting plan; invasive species control; maintenance and monitoring plans; specific timelines; and reporting/outreach requirements. The management prescriptions will be based on the principles of adaptive management, to ensure that the agreed upon performance standards are met over time.

Deleted: <#> Pending any required FAA and Metro approval, the Port agrees to plant 174 acres of cottonwood/ash forest on Government Island. A planting area map is enclosed as Attachment E. If FAA and Metro approval are not granted within one year of City approval of the management prescription as described in Paragraph 4.3.2.4 below, then the City and the Port will negotiate the terms of an amendment as described in Paragraph 7.1.6. ¶
The Port will draft and submit a site specific management prescription to the City (Bureau of Environmental Services) for review and approval. The management prescription

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The management prescription will be submitted to the City (Bureau of Environmental Services)

West Hayden Island Actions

4.3.3 The Port agrees to enhance 124 acres and re-establish 22 acres of cottonwood-ash forest on WHI as shown in Attachment E.

Government Island Actions

4.3.4 Pending any required Federal Aviation Administration (FAA) and Metro, the Port agrees to re-establish 174 acres and enhance 296 acres of cottonwood-ash forest on Government Island as shown in Attachment E.

4.3.5 Within one year of WHI annexation or one year of resolution of any appeals, the Port agrees to seek necessary approvals from the FAA and Metro to perform the Government Island re-establishment and enhancement actions described in this Section. If FAA or Metro approvals are not granted within one year of annexation, then the Port agrees to provide a lump sum of \$8.6 million to the City Bureau of Environmental Services to purchase one site within the Columbia River floodplain for the purpose of cottonwood-ash forest enhancement and restoration.

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Other Actions

4.3.6 The Port agrees provide a lump sum of \$4.1 million to the City Bureau of Environmental Services to purchase one site within the Columbia River floodplain and carry out cottonwood-ash forest re-establishment.

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General Provisions

4.3.7 The Port agrees to not place fill or remove trees outside the federally-designated Dredge Deposit Management Area until such time as the Port has completed the NEPA process and obtained necessary CWA 404 permit(s). Further, the Port agrees to obtain

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ESA authorization for any FEMA floodplain modification requests (such as a Conditional LOMR-F or a LOMR-F).

4.3.8 The Port will draft and submit a site specific management prescriptions to the City Bureau of Environmental Services for review and approval. The management prescriptions will be submitted to the City Bureau of Environmental Services no later than: one year from the date WHI is annexed to the City or; if the annexation is appealed, one year from the date all appeals of the City’s annexation are resolved and the annexation becomes final. Site preparation and planting will commence within one year following receipt of City approval of the management prescription.

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Deleted: 4.3.3 . Pending any required FAA approval, the Port agrees to implement an invasive species control program within an additional 296 acres of forest on Government Island, surrounding the planting areas described in Paragraph 4.3.2 (Attachment E). Within that area, invasive species will be controlled to no more than 20 percent of the understory vegetation. ¶

4.3.4 . The Port agrees to implement an invasive species control program within an additional 145 acres of forest on WHI (Attachment E). Within that area, invasive species will be controlled to no more than 20 percent of the understory vegetation.. ¶

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4.3.9 Where a lump sum payment is required to satisfy Paragraphs 4.3.5 – 4.3.6 above, the payment will be made to the City Bureau of Environmental Services no later than: one year from the date WHI is annexed to the City or; if the annexation is appealed, one year from the date all appeals of the City’s annexation are resolved and the annexation becomes final.

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4.3.10 Any enhancement or re-establishment actions carried out by BES as a result of lump sum payments described above will be carried out within the active and/or historic floodplain of the Columbia River, from the Sandy River confluence to the downstream Multnomah Channel confluence and the Willamette River to River Mile 3. This includes both the Oregon and Washington sides of the Columbia River.

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4.3.11 The Port’s obligation to implement and monitor the forest management prescriptions and the enhancement programs described in this Section will survive the termination of this Agreement and continue for 100 years as described in Section 7.4. The Port will monitor the enhancement and re-establishment sites per the performance standards (Attachment F.) Monitoring reports will be submitted to the City Bureau of Environmental Services.

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4.3.12 The City agrees, at the Port’s discretion, to enter into good faith negotiations to contract with the Port to perform the forest enhancement and reestablishment actions described in this Section, including maintenance and monitoring. The proposed cost estimate and “approved to form” contract are attached (Attachment G).

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4.3.13 As described in Paragraphs 4.3.3- 4.3.4 above, the Port is completing some forest mitigation actions prior to obtaining state and federal permits for marine terminal development. The City agrees that the Port may convert any of this completed forest mitigation into a mitigation bank, with credits available to mitigate for other (non-WHI) projects, in the event that: a) The 300 acres zoned for marine terminal development is not developed during the term of this agreement; and b) No additional forest clearing has occurred within the 300 acres; and c) The entire 300 acres has been transferred to a third party that is a public agency or a non-profit land trust-like organization, mutually acceptable to the Port and the City, whose mission would be to maintain property protections in perpetuity.

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4.4 Improvement of Western Meadowlark Habitat

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Notwithstanding any Goal 5 and ESEE decisions the City makes regarding WHI, the Port agrees to the following actions to replace impacted western meadowlark habitat as described in Paragraphs 4.4.2 though 4.4.4.

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4.4.2 Marine terminal development will impact approximately 123 acres of grassy and sparsely vegetated area on WHI. These acres support the at-risk species western meadow lark, as well as other grassland-associated species such as northern harrier and American kestrel. The grassy and sparsely vegetated area is the Dredge Deposit Management Area. While not a native grassland, the low structure vegetation, areas of open sand and relatively large size located in the historic Columbia River floodplain fulfill habitat requirements for grassland-associated species. The use of the area for dredge material placement mimics historic disturbance regimes caused by flooding, maintaining the low structure vegetation.

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4.4.3 The purpose of this section is to compensate for the loss of western meadowlark habitat impacted by marine terminal development. The Port's payment obligation will begin no later than one year from the date WHI is annexed to the City or; if the annexation is appealed, one year from the date all appeals of the City's annexation are resolved and the annexation becomes final.

Deleted: impacted by marine terminal development. The Port's payment obligation will begin no later than one year from the date WHI is annexed to the City or; if the annexation is appealed, one year from the date all appeals of the City's annexation are resolved and the annexation becomes final

4.4.4 The Port agrees to make a one-time grant of \$1.5 million to the City Bureau of Environmental Services for purpose of western meadowlark habitat conservation or enhancement. The City may at its discretion further distribute these funds to a 3rd party for the purposes of western meadowlark habitat conservation.

5. COMMUNITY BENEFIT MEASURES

5.1 Purpose

The purpose of the community benefit measures described in Section 5 is to address potential adverse effects of development on WHI and to maintain and improve relations between the City, Port, and affected communities. Specifically, there is community concern related to potential light, noise, and air pollution associated with industrial development, and the effect of those potential impacts on households located within one mile of WHI.

5.2 Best Management Practices for Marine Terminal

5.2.1 The Port will implement the "Green Performance Goals" described in Attachment F during marine terminal construction and operation.

5.3 Community Impact Mitigation

5.3.1 The Parties have a mutual interest in improving recreational and open space access on Hayden Island, which the City acknowledges is also consistent with implementing the Hayden Island Plan (2009). The City and the Port agree to fund community recreational improvements, as described in Section 3.2 above, and pursuant to Section 7.1.

5.3.2 The Port will establish a Community Benefit Grant Program (Grant Program), beginning no later than: one year from the date WHI is annexed to the City or; if the annexation is appealed, one year from the date all appeals of the City's annexation are resolved and the annexation becomes final. The Port's obligation to implement and continue the Grant

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Program will survive the termination of this Agreement and continue based on truck traffic volumes on North Hayden Island Drive, as described in Paragraph 5.3.2 and Section 7.4.

5.3.3 Once established, the Port will contribute \$100,000 each fiscal year to the Grant Program, for ten years. When construction of the rail loop is complete and the first marine terminal begins operations, the Port's annual contribution will be the higher of: (1) a total dollar amount calculated at 50 cents for every heavy truck that uses Hayden Island Drive to enter or exit the terminal gate house each day; or (2) \$25,000. The Port is responsible for documenting and reporting daily truck traffic volumes to the City (PBOT) on a n annual basis as described in Section 7.3.2. Grant Program funds not spent in any one fiscal year will be carried forward.

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Deleted: and increase its annual contribution to \$40,000 annually when construction of the rail loop begins. The Port will maintain that level of funding for the duration of the construction period.

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5.3.4 The Parties will define Grant Program procedures and eligibility within 3 Months of the establishment of the program, in consultation with the Advisory Committee described in Section 7.2.2. below. The Advisory Committee will recommend Grant Program funded projects for Port consideration and approval.

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5.3.5 The Port will establish a Manufactured Home Park Grant Fund for \$3.6 million to mitigate for manufactured home park impacts. Initial funding of \$150,000 will be available to the City (Housing Bureau) to set up the program(s) within 6 months from the date WHI is annexed to the City or; if the annexation is appealed, 6 months from the date all appeals of the City's annexation are resolved and the annexation becomes final. The Housing Bureau will deliver a plan for the distribution and use of funds to City Council within 9 months of receiving the initial disbursement of planning funds to set up the program. The remainder of the funds will be available within one year of City Council approval of the plan.

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5.3.5.1 The Manufactured Home Park Grant Fund may be used for, but not limited to the following:

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- Down payment assistance for replacement manufactured homes
- Weatherization updates
- HVAC upgrades
- Window replacement
- Individual development accounts
- Case management services

5.3.5.2 The program plan developed by the Housing Bureau will layout specific governance and public involvement elements of the fund in addition to solidifying how the funds may be used. The City and the Port will develop a cooperative funding strategy to support the development of the Manufactured Home Park Fund, pursuant to Section 7.1 of this agreement. The program will gave a goal of leveraging a 1:1 match with any state and federal funds that may be available.

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5.4 **Community Health Impacts**

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5.4.1 The parties understand that consideration of health impacts may be required as part of federal permitting for marine terminal development. A Health Impact

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Assessment (HIA) may be one mechanism to develop that information and make it available to the public. The City (BPS) and the Multnomah County Health Department (MCHD) completed a preliminary public health analysis as part of the annexation process. The scope of that study was general in nature, because there was no specific Port development proposal to consider during that process.

5.4.2 To build on that preliminary analysis, the Port will fund additional City (BPS) health-related analysis in the amount of \$95,000. The City, in consultation with the MCHD, will use these funds to support the development of an HIA of the Port’s specific development plans. The HIA will be completed before the Port submits the first federal permit or federal funding application for development on WHI. The term “development” includes rail or marine terminal development on WHI, or related docks and causeways below ordinary high water in the Columbia River. The term “permits” includes federal permit or funding applications submitted by entities acting as agents of the Port, or by any lessee of Port property on WHI. The Port will notify and secure the cooperation of it agents and lessees in complying with this requirement.

5.4.3 The completed HIA will be provided to the WHI Advisory Committee described in Section 7.2.2, as well as any state and federal regulatory authorities involved in making decisions or commenting on the first federal permit or federal funding application for development.

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5.4.4 The Port agrees to give the City advance notice of its intent to submit any state or federal permit application for development on WHI in the manner described in Paragraphs 18.1- 18.2. The funding described in Paragraph 5.4.2 will be available to the City within three (3) months of that notice.

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5.4.5 The Port, in consultation with the Advisory Committee described in Section 7.2.2., will establish and manage a fund or endowment in the amount of \$1 million, the earnings of which will be used to implement further mitigation measures that may be recommended in the HIA described above.

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6. EMPLOYMENT & WORKING WATERFRONT GOALS

6.1.1 The City is an important trade gateway for the region and statewide businesses accessing international markets. This important function is critical to meeting the goal of doubling exports outlined in the Presidents National Export Initiative and reflected in the region’s Export Strategy.

6.1.2 The Parties will prioritize investments that continue and support the City’s Gateway role, including work to secure marine terminal operations that are anticipated to generate 3,000 direct, indirect and induced jobs associated with WHI at full build-out.

6.1.3 To the extent permitted by law and labor contracts existing at the time of development, the Port agrees to implement a “first source agreement” giving North Portland residents priority for jobs on WHI created by the development. The agreement will include specific outreach to Hayden Island residents.

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6.1.4 On or before July 1 of each calendar year, the Port will give the City an accounting of job and state and local tax contribution for WHI as part of the Port’s ongoing Economic Impact Analysis of its operations. .

6.1.5 The Port and the City will implement the action items outlined in the Region’s Export Strategy and promote Portland as an International City for Business development.

7. FUNDING, PUBLIC INVOLVEMENT, ADMINISTRATION

7.1 Funding Strategy, Availability and Appropriation of Funds

7.1.1 The Parties are public agencies with the fiduciary duty to spend public funds in accordance with applicable law. The Port is also subject to grant assurances, revenue use policies and aviation land use constraints with respect to aviation-related operations. Furthermore, the City is restricted by state law and the City Charter regarding the use of the General Fund for private purposes, as well as by other financial policies and limitations. The purpose of Section 7.1 is to memorialize the Parties’ understanding of their respective rights and limitations relating to funding obligations contained in this Agreement.

7.1.2 A WHI project consultant (Worley Parsons) prepared a preliminary cost estimate of necessary public infrastructure associated with development of WHI as part of the Concept Plan final report. The City (Office of Management and Finance – OMF, PBOT and BPS) will work with the Port to refine this estimate, and identify more specific financing tools that could support the anticipated public investments. The City and the Port agree to develop a comprehensive project list, establish projected timelines and refined cost estimates, identify potential funding sources, and develop preliminary funding structures and strategies for the project elements itemized in this agreement, by July 1 2016. For purposes of this Section, the project elements include those described in Sections 3.1-3.3, 4.3-4.4, 5.3-5.4 and Paragraph 7.2.1.

7.1.3 The Parties may use grants, donations, state or federal cost-share funds, or any other source of funds to meet their respective obligations in this Agreement.

7.1.4 All specific funding obligations of the Port and City contained in this Agreement are contingent upon funding being available and appropriated by the Port Commission and City Council. The Parties acknowledge that there are a variety of uncertainties, including future market conditions, that will affect the availability of funds. The Parties will strive to attain funding necessary to meet their respective obligations under this Agreement to the extent reasonably possible.

7.1.5 The preliminary cost estimate assumes funding from sources not wholly within the Parties’ control, which the Parties may use to meet their respective obligations in this Agreement. The City and the Port, individually and collectively, agree to diligently pursue reasonable funding from non-local public sources, including federal and state allocations, private foundations, grant programs, donations and other appropriate funds or programs (External Funds). The City and the Port will jointly develop priorities for pursuing these External Funds. The Parties agree to seek funding in a manner that that will not divert from (or compete with) the City’s general transportation revenue sources including state gas tax revenues.

7.1.6 If funding is not appropriated or anticipated External Funds are not committed when and as required, the Parties will immediately negotiate in good faith in an effort to agree upon a reprioritization of the sources and uses of funding set forth in this Agreement and negotiate an amendment to this Agreement to reflect that reprioritization. If after at least ninety (90) days of good faith negotiations, the Parties are unable to agree on the terms of an amendment, then any Party may elect to terminate this Agreement in the manner specified in Section 17 of this agreement.

7.1.7 All specific funding amounts identified in this Agreement are stated in 2011 dollars. At the time a specific project or action with a specifically stated dollar amount is implemented, the dollar amount, will be converted to the current equivalent amount, based on the CPI-U. The term "CPI-U" means the most recent Consumer Price Index for All Urban Consumers (1982-1984 equal to 100) Portland-Salem OR-WA for All Items, or a comparable index published by the United States Bureau of Labor Statistics if such Consumer Price Index is discontinued. For all transportation related costs identified in this Agreement, future costs will be adjusted based on the National Highway Construction Cost Index as documented by FHWA. The Portland Bureau of Transportation will also determine additional inflation factors, such as City overhead rates, that are not accounted for by FHWA.

7.1.8 If no industrial development has occurred on WHI by July 1, 2027, or if the Port has not been successful in securing permits, land use approval or other necessary approvals for such development by that date, the Port's pre-development financial obligations will be suspended. The obligations will resume again once development commences. For purposes of this paragraph, the Port's predevelopment financial obligations are those identified in Sections 3.1-3.3, 4.3-4.4, 5.3-5.4 and Paragraph 7.2.1.

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7.2 Coordination and Public Involvement

7.2.1 Preparation and Review of Open Space Strategy

The Port will prepare a written strategy for the use of the OS-zoned area, (OS Strategy) in consultation with the City, specifically the City bureaus of Parks and Recreation and Environmental Services. The Port will prepare and submit a draft OS Strategy for advice and comment to the WHI Advisory Committee (the "WHI AC") established in Paragraph 7.2.2, no later than: five years from the date WHI is annexed to the City or; if the annexation is appealed, five years from the date all appeals of the City's annexation are resolved and the annexation becomes final. The OS Strategy will be in a form appropriate to the Port's desired utilization of the Open Space Area (described herein), and may evolve over time as specific needs arise. The topics addressed in the OS Strategy will include but are not limited to desired future conditions for natural resources on WHI, and include long-term management practices for both natural areas and recreational amenities. The OS Strategy will be used to guide the refinement and design of specific recreational improvement plans, and establish a timeline for those improvements in consultation with the City Bureaus of Parks and Recreation and Environmental Services. Development of the OS Strategy is expected to facilitate implementing the conservation measures described in Section 4, and serve as a means to coordinate recreation projects described in Section 3.2. However, the OS Strategy does not independently obligate the Port to implement any specific projects. The Port agrees to pay for BES, PP&R and consultant time to support City participation in development of this strategy, up to \$200,000.

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7.2.2 **Advisory Committee.** The Port, in collaboration with the City will establish an ongoing WHI Advisory Committee (“WHI AC”). The mission of the WHI AC will be to: a) comment on the development and implementation of an OS Strategy; b) advise the Port and City during recreational facility design and development; c) negotiate a Good Neighbor Agreement to be implemented during construction and subsequent terminal operations, d) provide an ongoing forum for discussion of neighborhood impacts associated with ongoing recreational and marine terminal uses on WHI, e) recommend projects for funding under the Community Benefit Grant Program, and f) review of the HIA. The membership and role of the WHI AC will be re-evaluated every 5 years to determine its roles and responsibilities. The WHI AC may be suspended or disbanded and/ or its purpose or operations may be amended by mutual agreement of the Port and City.

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7.2.3 **WHI AC Membership.** The AC will consist up to twelve (12) voting members. To the extent feasible, the WHI AC will incorporate bi-state, regional, and diverse representation, including representatives of the local WHI community, environmental organizations, economic development organizations, business and public agencies. .. An effort will be made to ensure that membership among different groups are balanced. Each of the specific membership interest groups shall appoint a member, for terms beginning July 1, 2013. Initial appointments shall be for a period of two (2) or three (3) years staggered to ensure continuity of membership. Following the initial year, appointments shall be for a period of two (2) years with no term limits. All appointed members shall be confirmed by Sponsors (as defined below) based on Sponsor approved appointment guidelines. Each appointment shall be effective on the date of confirmation by the Sponsors. For those WHI AC positions where no one organization holds the interest, Sponsors agree to circulate a broad invitation letter to appropriate interest groups to request joint agreement on an appointment. If the groups do not achieve consensus, Sponsors shall appoint the member from a pool of interested candidates in collaboration with the Chair, Vice Chair and WHI AC members. Meetings shall be held quarterly with meetings added or eliminated as needed.

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7.2.4 **WHI AC Sponsorship.** The Port, and the City (represented by the Mayor) shall sponsor the WHI AC ("Sponsor"). Sponsors shall create and sustain the WHI AC. Specifically, the Sponsors will define the WHI AC parameters, confirm all appointments, provide administrative and technical resources, receive regular reports, evaluate performances and evaluate future structure. Sponsors shall provide staff support and technical expertise and work with the WHI AC to resolve issues and navigate barriers.

7.3 Reporting and Adaptive Management

Within 30 days of the beginning of each Port fiscal year, the Port will report in writing to the WHI AC established under Section 7.2.2 on the progress and status of the following:

7.3.1 The mitigation activities described in Section 4.

7.3.2 Truck traffic volumes as referenced in Paragraph 5.3.2. and specifically, the number of heavy trucks that use Hayden Island Drive to enter or exit the marine terminal gate house each day.

7.3.3 Progress toward meeting employment goals described in Section 6

7.3.4 Progress toward implementing the Open Space Strategy in Paragraph 7.2.1

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7.3.5 Each report will describe specific projects completed during the previous year and anticipated to be accomplished during the next year, including relevant cost and budget information.

7.3.6 The Port and City will apply generally accepted principles of adaptive management in the implementation of this Agreement. The Port and City will to comprehensively review the work performed and funded under this Agreement at least every five (5) years with the first comprehensive review to be completed no later than: five years from the date WHI is annexed to the City or; if the annexation is appealed, five years from the date all appeals of the City’s annexation are resolved and the annexation becomes final..

7.4 Continuing Obligations

The following Port obligations will survive the termination of this Agreement and continue as described in this Section unless modified with the City’s consent:

7.4.1 The Port’s obligations to fund and perform the transportation, sewer and water improvements as described in Sections 3.1 and 3.3 will survive the termination of this Agreement and continue in perpetuity.

7.4.2 The Port’s commitment to not seek [or support](#) rezoning of the OS zoned area pursuant to Paragraph 4.1.1 will survive the termination of this Agreement and continue in perpetuity. [The instrument memorializing this commitment will incorporate a third party organization selected by the City, which will be granted the power to veto future amendments to that agreement.](#)

7.4.3 The Port’s obligation to maintain sites planted as forests and control invasive vegetation pursuant to Paragraphs 4.3.1 – 4.3.13 will survive the termination of this Agreement and continue for a 100-year period.

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7.4.4 The Port’s obligation to continue a Community Benefits Grant Program pursuant to Paragraphs 5.3.1-5.3.3 will survive the termination of this Agreement and continue in perpetuity based on a truck traffic volume metric defined in Paragraph 7.3.2.

7.4.5 To memorialize the continuing obligations described in Paragraphs 7.4.1 through 7.4.4 the Port will execute and record covenants, maintenance agreements, easements, or other binding instruments, in a form acceptable to the City, [These instruments will be in a form that runs with the WHI land and will be binding on subsequent property owners of that land, any entities acting on the Port’s behalf on WHI, and any entities leasing land on WHI.](#) The instruments will be executed and recorded no later than: one year from the date WHI is annexed to the City or; if the annexation is appealed, one year from the date all appeals of the City’s annexation are resolved and the annexation becomes final.

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8. DISPUTE RESOLUTION

8.1.1 Within 30 days of the identification of a dispute (Dispute Date) under this Agreement, all parties will expeditiously initiate the following informal dispute resolution process:

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8.1.1.1 City and Port staff will meet to discuss and resolved the dispute to the extent possible.

8.1.1.2 If the dispute cannot be resolved by City and Port staff within 60 days of the Dispute Date staff will promptly refer the dispute to the appropriate City and Port program managers for discussion and resolution.

8.1.1.3 If the dispute cannot be resolved by City and Port Program Managers within 90 days of the Dispute Date, the informal dispute resolution process will terminate. Each party may elect to declare a default and pursue any remedies available under Section 9 of this Agreement.

9. REMEDIES

9.1.1 Default

The following shall constitute default:

Any breach of the provisions of this Agreement whether by action or inaction, which continues and is not remedied within ninety (90) days after the non-defaulting party has given written notice to the defaulting party specifying the breach; provided that if the defaulting party determines that the breach cannot with due diligence be cured within a period of ninety (90) days, the non-defaulting party may, in its sole discretion, grant a longer period of time to cure the breach, so long as the defaulting party diligently proceeds to cure the breach and the cure is accomplished within no more than one hundred eighty (180) days.

9.1.2 Specific Performance

If a Party defaults under the terms of this Agreement, the non-defaulting party may, in addition to any other remedies at law or equity, compel the other Party's performance under this Agreement or prevent any action contrary to this Agreement by injunction or other equitable relief.

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9.1.3 Nonexclusive Remedies

No remedy conferred on or reserved to any Party under this Agreement is intended to be exclusive of any other remedy allowed by law. Unless expressly provided otherwise in this Agreement, each and every remedy will be cumulative and will be in addition to any other remedy given to each Party in this Agreement.

9.1.4 Waiver of Default

To the extent not precluded by this Agreement, the nondefaulting Party may, in its discretion, waive any default hereunder and its consequences and rescind any consequences of such default. In case of any such waiver or rescission, the Parties will be restored to their respective former positions or rights under this Agreement, but no such waiver or rescission will extend to or affect any later or other default, or impair any right consequent thereon. No such waiver or rescission will be in effect unless it is in writing and signed by the nondefaulting Party.

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10. CAPACITY TO EXECUTE

The Port and the City each warrant and represent to one another that this Agreement constitutes a legal, valid and binding obligation of that party. The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the party for whom they purport to be acting.

11. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

12. DEFINED TERMS

Capitalized terms will have the meaning given them in the text herein. Any undefined terms will have their dictionary definitions.

13. ENTIRE AGREEMENT

This Agreement represents the entire agreement between the Port and the City relating to annexation of WHI. This Agreement has been thoroughly negotiated between the Port and the City; therefore, in the event of ambiguity, there shall be no presumption that such ambiguity should be construed against the drafter.

14. GOVERNING LAW

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Oregon. Jurisdiction shall be with Multnomah County Courts or the Federal Court located in Portland, Oregon.

15. HEADINGS

The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

16. MODIFICATION

Unless otherwise specifically set forth herein, this Agreement may be amended only by a written agreement of the Port and the City that is signed by authorized signatories for both Parties.

17. TERMINATION

17.1 The Agreement may be terminated only on mutual written agreement of the Parties.

17.2 Notwithstanding Paragraph 17.1 either party may terminate this agreement if the other party fails to fulfill the obligations stated in Section 7.1 with 30 days written notice to the other party.

18. NOTICES AND COMMUNICATION

18.1 A notice or communication under this Agreement by one Party to the other Party is deemed received by the addressee on the earlier of:

18.1.1 The actual date of receipt; or

18.1.2 Three (3) days after mailing, if mailed by registered or certified mail, postage prepaid, return receipt requested.

18.1.3 In the case of a notice or communication to the City, addressed as follows:

Director, Bureau of Planning and Sustainability
1900 SW Fourth Avenue, Suite 7000
Portland, OR 97201

with a copy to:

City Attorney
1221 SW Fourth Avenue, Suite 430
Portland, OR 97204

In the case of a notice or communication to the Port, addressed as follows:

Executive Director, Port of Portland
7200 NE Airport Way
Portland, OR 97218

or addressed in any other way to a Party as that Party may, from time to time, designate in writing as provided in this section.

18.1.4 In lieu of a mailing, a communication is deemed received by a Party on the date it was transmitted by facsimile or e-mail to that Party at the fax number set out above, if the transmitting Party has a written confirmation of the successful transmittal.

18.2 The Port agrees to give the City advance notice of its intent to submit any state or federal permit application for development on WHI, at least 24 months before the application is filed with the issuing agency. “Development” includes rail or marine terminal structures, or related docks and causeways below ordinary high water in the Columbia River. “Permits” include those submitted by entities acting as agents of the Port, or any lessee of Port property on WHI.

19. SEVERABILITY

19.1 Except as provided in Paragraph 19.2, if any clause, sentence, section, paragraph, or other portion of this Agreement is declared illegal, null or void for any reason, the validity of the remaining portions will not be affected and the rights and obligations of the Parties will remain in full force and effect to the fullest extent permitted by law.

19.2 If all or any portions of Section 3.1 (Transportation), Section 3.3 (Sewer and Water Systems), Paragraph 4.1.1, Paragraphs 4.3.1 through 4.3.3, or Section 5.3 (Community Impact Mitigation) of this Agreement is declared illegal, null or void for any reason, this Agreement will terminate in its entirety and the rights and obligations of the Parties under this Agreement will have no further force and effect.

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

THE CITY OF PORTLAND

THE PORT OF PORTLAND

By: _____
Sam Adams, Mayor

By: _____
Bill Wyatt, Executive Director

Date: _____

Date: _____

By: _____
LaVonne Griffin-Valade, Auditor

Date: _____

APPROVED AS TO FORM FOR THE CITY:

APPROVED FOR LEGAL SUFFICIENCY FOR THE PORT:

By: _____
City Attorney

By: _____
Counsel for The Port of Portland

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IGA ATTACHMENTS:

ATTACHMENT “A” depicting WHI

ATTACHMENT “B” City 1/4 Section Maps showing zoning to be applied on the effective date of the Agreement

ATTACHMENT “C” describing transportation system upgrades and recommended improvements referenced in Section 3.1.

ATTACHMENT “D” WHI Concept Plan Map

ATTACHMENT “E” depicting agreed-upon forest [re-establishment](#) and [enhancement](#) areas [and mitigation performance standards](#) referenced in Section 4.3

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ATTACHMENT “F” Green Performance Goals

[ATTACHMENT “G” Mitigation cost estimates and contract sample.](#)

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Consultation and Coordination. The Port agrees to coordinate and consult with the City in the developing of the final mitigation proposals that will be included in the state and federal permit applications consistent with Paragraphs 4.2.5.1 through 6 below (collectively referred to as Coordination and Consultation). This Coordination and Consultation applies to all state or federal permit applications seeking authorization for development on WHI. "Development" includes rail or marine terminal structures, or related docks and causeways below ordinary high water in the Columbia River. "Permits" include those submitted by entities acting as agents of the Port, or any lessee of Port property on WHI. The Port will notify its agents or lessees of the Coordination and Consultation process, and secure their compliance with this process.

The Port agrees to give the City advance notice of its intent to submit any state or federal permit application for development on WHI as described in Paragraph 18.1- 18.2. The Coordination and Consultation process will begin within 7 days of that notice.

To implement Coordination and Consultation, the Parties agree to form a "Coordination Team" of six (6) people composed of three (3) City appointees, and three (3) Port appointees. The City Mayor will appoint the City members of that team, and the Port Executive Director will appoint the Port members. Entities acting as agents of the Port, or lessees of Port property may be included among the Port members. The Coordination Team will review and approve the final environmental mitigation proposals that will be included in the state and federal permit applications subject to this process. The Port agrees to include in the permit applications the mitigation approved by the Coordination Team.

The Parties acknowledge that it is desirable to carry out early informal mitigation-related consultation with state and federal authorities. If state and federal regulatory authorities are willing to engage in early informal consultation, the Parties, through the Coordination Team, will make a good faith effort to engage in that informal consultation.

The Parties will jointly fund staff time necessary to support Coordination and Consultation for at least 18 months.. The Coordination Team will review draft permit application packages, including mitigation design drawings, Biological Assessments, and any other supporting information the Port intends to submit to permitting agencies.

Each party agrees to give the other 30 days notice of its intent to invoke this clause. The City Mayor and the Port Executive Director must agree to any revision to the minimum elements. Additionally, the Parties will publish a written explanation for any changes, hold a public hearing on the changes, and allow 30 days for public comment after the hearing before the revised minimum elements are final.

If a majority of the Coordination Team is unable to agree on the mitigation proposals to be included in any necessary state or federal permit applications, the Parties shall rely on the dispute resolution procedures described in Section 8 of this agreement.

City Support. The City agrees to support the mitigation proposal approved by the joint planning team, and will not independently request additional mitigation during the public comment periods associated with the state and federal permitting process.