

NO. 3000526
INTERGOVERNMENTAL AGREEMENT
WEST HAYDEN ISLAND (WHI) LAND USE APPROVALS
WORK PROGRAM AND TASKS

This INTERGOVERNMENTAL AGREEMENT (Agreement) is between the CITY OF PORTLAND, a municipal corporation of the State of Oregon (City) and the PORT OF PORTLAND, an Oregon public corporation (Port). Collectively the City and Port are referred to as Parties, and each individually as a Party.

RECITALS:

1. ORS 190.010 authorizes the Parties to enter into this Agreement.
2. West Hayden Island (WHI) is located along the south shore of the Columbia River, and consists of the western portion of the island, west of the BNSF railroad tracks and approximately nine miles north of downtown Portland. WHI covers approximately 800 acres and 5.8 miles of Columbia riverfront consisting of vacant land, wildlife habitat, a dredge material handling facility, a City of Portland sewer outfall, right-of-way and electric transmission lines. In-water areas immediately adjacent to WHI are used for barge mooring and log raft storage.
3. WHI is located in unincorporated Multnomah County. Metro brought WHI into Metro's Urban Growth Boundary in 1983 for the expressed purpose of marine industrial land development. In Metro's 1995 2040 Growth Concept Plan, the northern portion of WHI was designated industrial and the southern portion designated as open space. In the 2004 Metro Title 4 decision, all of WHI was designated as Regionally Significant Industrial land and reflected on the updated 2040 growth concept.
4. In 2005 WHI was also identified by Metro as a high value riparian area and as a habitat of concern in the adopted regional inventory of significant natural areas. In consideration of the high urban development value also on the site, WHI received a designation of moderate habitat conservation area in Metro's Title 13 process. The shallow water habitat surrounding West Hayden Island is designated as "critical habitat" for salmonid species listed under the Federal Endangered Species Act.
5. The City has administered land uses on WHI using the Multnomah County zoning ordinance. The current zoning is Multiple Use Forest, MUF-19, with a Significant Environmental Concern (SEC) overlay.
6. The Port purchased WHI in 1994 for expansion of marine industrial facilities after Metro brought WHI into the UGB, in accordance with Metro's responsibility to provide a 20 year land supply for commercial, industrial and residential uses.
7. In the late 1990s, the Port took a number of steps to implement a comprehensive development program for marine facilities at WHI. The Port worked with the City to annex, zone and create a plan district for WHI. In 2000, the Port postponed the annexation, permitting and development planning work.
8. In the summer of 2007, the City began preparation of the Hayden Island Plan (for that portion of the island east of BNSF railroad tracks), which does not include WHI. The Hayden Island Plan was scheduled to coincide with the work on improvements planned for the I-5 corridor across Hayden Island, known as the Columbia Crossing.
9. Given the timing of the Hayden Island Plan and the Columbia Crossing, the City and the Port desire to work collaboratively together on future planning for WHI. The City and Port

land in a manner compatible with Metro's 2040 Growth Concept Plan, Metro Titles 4, 11 and 13, and pertinent city, state and federal policies and regulations contingent upon the work contained in this agreement.

10. Metro Code section 3.07.1330(B)(4)(a), which is part of Title 13 (Nature in Neighborhoods), requires the City to develop a district plan in cooperation with the Port of Portland. The City and Port's objective is to complete the City legislative process for annexation, Comprehensive Plan and Map designation, zoning, and plan district adoption. Longer term, more detailed planning efforts, including any federally required environmental impact analyses, will be deferred until such time as there is a specific proposal.
11. Whereas the Port and the City recognize that the annexation and future development of WHI may have significant social, economic, energy, and environmental impacts, the Port and the City have established a Community Working Group (CWG) as described in Exhibit 2, "Community Working Group Charter."
12. Whereas the City and the Port are embarking on this in a full faith effort to annex and apply appropriate City zoning to WHI, the final decision in this process will be made by the Portland City Council.
13. It is in the City and Port's interest to outline the process and associated costs of the integrated land use planning effort between the City and Port, including work tasks, timelines, expected products and funding mechanisms.
14. The WHI planning process is envisioned as a collaborative effort between the City, Port and regional stakeholders to be conducted within the framework of, and consistent with, state and local land use policies and regulations. The process acknowledges the future importance of WHI in the bi-state regional economy and its importance in the regional ecosystem and open space network. The process will examine creative approaches to addressing annexation, Comprehensive Plan and Map designations, and zoning for future uses.
15. The City and Port acknowledge that decisions made in this process may be controversial. Accordingly, it is in the City and Port's interest that the process be fact-based, and managed in a way that maintains trust among stakeholders and avoids bias toward a specific outcome.

TERMS AND CONDITIONS

1. GENERAL AGREEMENT

This Agreement outlines the work the Parties will undertake to bring forward to the City Council a proposal to annex, zone and create a plan district for WHI using a City legislative annexation process. Included is a description of the work program and tasks that the City will undertake and the portion of the planning costs that will be reimbursed by the Port.

The City and Port agree that while the Port is paying for a portion of the costs associated with this work, there is no guarantee that any or all of the work product will be adopted by the City Council, or the Port Commission, or adopted in the form recommended by the Planning Commission to the City Council.

2. CITY RESPONSIBILITY

- A. The City agrees to work collaboratively with the Port in an ongoing planning process, as described in Exhibit 1, "Work Program for Integrated Port and City West Hayden Island Annexation, Zoning and Planning." The planning process will include a public outreach

component and solicitation of input from stakeholders as described in Exhibit 1. This will include a Community Working Group (CWG) as described in Exhibit 2, "Community Working Group Charter". The process will have a facilitator jointly selected by both the Port and the City for the planning process.

- B. Consistent with the applicable state, regional and local annexation procedures, the Bureau of Planning and Sustainability (BPS) will prepare and present a proposal to City Council to annex, zone and create a plan district for WHI. BPS will produce a written plan/report and documentation consistent with the project purpose described in Exhibit 1. BPS will coordinate with the Portland Bureau of Transportation as necessary to provide required transportation planning findings.
- C. BPS will contract with the facilitation, marine economic, and environmental consultant(s) described in Exhibit 1. The purpose of these consultant contracts is to provide third-party meeting facilitation for the CWG, and provide foundational information to support the WHI concept plan development and annexation process. The consultant(s) selected must meet minimum qualifications established jointly by the City and Port, including experience commensurate with the specific scope of work. The consultant(s) shall be selected by the City with Port and CWG input, using City procurement processes. Consultant reports managed by the City will be submitted to the Port for initial review and check for accuracy. This review will be limited to confirming that reports have been completed according to the identified scope of work, are accurate and meet generally accepted professional standards.
- D. The City will participate in a Coordinating Committee as described in Exhibit 1.
- E. Nothing in this Agreement is intended to commit the City to annex WHI, limit or prohibit the City from initiating changes to the *Zoning Code*, or predetermine the outcome of any annexation proceedings or legislative land use proceedings concerning WHI in accordance with the law.

3. PORT RESPONSIBILITY

- A. The Port agrees to work collaboratively with the City in an ongoing annexation and planning process, as described in Exhibit 1 to the Agreement per Metro Title 13. The WHI annexation and planning process will include stakeholder involvement and public outreach as described in Exhibit 1. The Port will participate in this planning process consistent with its public mission to enhance the region's economy and quality of life by providing access to national and global markets.
- B. The Port will participate in the CWG and in a Coordinating Committee as described in Exhibit 1.
- C. The Port will provide studies, expertise, baseline information and data to BPS at the request of the City and/or CWG to complete all phases of the foundation studies and the legislative land use process.
- D. The Port's goal is to create a WHI Plan District that allows for marine industrial and open space land use designation consistent with the Port's mission, state, regional and local land use policies and regulations. Nothing in this Agreement is intended to be construed as Port approval of a specific annexation, comprehensive plan and map designation, zoning or plan district of its property on WHI. The Port reserves all rights to object to City Council determinations regarding planning for WHI and/or to withdraw its consent to annex WHI.

4. PAYMENT

The Port agrees to reimburse the City for certain reasonable costs associated with the City's management and staffing of the annexation and planning process in the amounts and on the terms specified in this Agreement and based on the work scope as outlined in Exhibit 1.

- A. Staff Time and Materials. The Port agrees to reimburse the City for its actual cost of salary and benefits for staff time spent on the WHI annexation project for the following specific staff: one full time Senior planner; one full time City Planner 2; and additional assistance from environmental planning staff, PDOT planning staff, graphics staff, and communications staff. The Port will not pay for sick time, holidays, and vacation. The City will not bill the Port (and the Port will not pay) for any time the WHI planning staff spends working on any other project or administrative work. The Port also agrees to reimburse the City for materials costs such as printing the plan, copies of materials discussed at project-related meetings, and incidental costs related to CWG meetings. The total amount reimbursed by the Port for all staff and materials will not exceed \$245,000 over the course of the Agreement term. The Port will be billed monthly, in arrears, and will have thirty (30) days to pay the invoice. Each invoice will be accompanied by time recordings, in a form acceptable to the Port, showing the planning hours worked by planning staff exclusively on the Port's project.
- B. Foundation Studies. The Port agrees to reimburse the City for facilitation, economic, and environmental consultant work not to exceed \$195,000 based on mutually developed work scopes that have been informed by the CWG discussion.

5. COMMUNICATIONS

All formal communications and notices relating to the administration of this Agreement shall be directed to the following persons:

Port of Portland – Susie Lahsene
Bureau of Planning and Sustainability – Eric Engstrom

6. TERM

This Agreement shall be effective upon execution by both Parties and will terminate on July 31, 2010. The Parties may extend the term of the Agreement by mutual written agreement. Any amendment to this Agreement will incorporate a detailed schedule and budget for reimbursable costs incurred by the City, as described in Paragraph 4 above.

7. TERMINATION

Any one of the Parties may terminate this Agreement without cause with 30 days written notice to the other Party. In the event of termination, the City shall invoice the Port for work performed through the date of termination and the Port shall pay in accordance with paragraph 4.

8. AMENDMENTS

This Agreement and its terms and conditions may be amended by mutual written agreement of the Parties. Amendments shall be valid only when reduced to writing and signed by both Parties.

9. LAWS GOVERNING

This Agreement shall be construed and governed, in all respects, in accordance with the laws of the State of Oregon. Should any portion of this Agreement or any amendments thereto be adjudicated by a court of competent jurisdiction to be in violation of any local, state, federal law or regulation, then such portion or portions shall become null and void, and the parties may terminate this Agreement or they may agree to promptly renegotiate the Agreement to bring this Agreement into compliance with said laws.

10. MEDIATION

The Parties intend that this IGA will be used as a tool toward achieving their mutual goal of annexation, Comprehensive Plan and Map designation and a Plan District for WHI. In the event, however, that either the City or the Port believes that there is a conflict that cannot be resolved through this joint working process, either Party may request a review of issues by the Mayor and Executive Director of the Port, which may include mediation.

10. ENTIRE AGREEMENT

This Agreement, including Exhibit 1 and Exhibit 2, contains the entire agreement between the two Parties and supersedes any and all other agreements, written or oral, expressed or implied, pertaining to the subject matter hereof.

APPROVED BY:

CITY OF PORTLAND

By: [Signature]
Sam Adams, Mayor

Date: 5/29/2009

By: J. Griffin-Valade by DIS
LaVonne Griffin-Valade Auditor
Date: 5/29/2009

Approved as to form:
CITY ATTORNEY

APPROVED AS TO FORM
By: [Signature] KSB
Linda Wong, City Attorney
Date: CITY ATTORNEY

PORT OF PORTLAND

By: [Signature] for Bill Wyatt
Bill Wyatt, Executive Director

Date: May 15, 2009

Approved as to legal sufficiency:
COUNSEL FOR THE
PORT OF PORTLAND

By: [Signature]

EXHIBIT 1

Work Program for Integrated Port and City West Hayden Island Annexation, Zoning and Planning

Project Purpose:

The City of Portland is leading a process to consider the most beneficial long term vision for West Hayden Island.

The project will include consideration of annexation, Comprehensive Plan designation and map changes, zoning and plan district designations for WHI, consistent with statewide planning goals, statutes, and state, regional and local regulations. There will be stakeholder involvement and a public outreach program.

It is envisioned that the eventual WHI Plan District will establish the zoning for the property and allowed uses. The WHI Plan District is intended to provide a decision-making framework for future review of specific proposals. The WHI Plan District will not provide immediate authorization for specific development at this time, and therefore no state or federal permit applications will be part of this process.

Objectives:

1. Produce a long term vision and long-range plan for West Hayden Island that will serve as a foundation for an annexation decision.
2. Define desired types of industrial development, recreational use, and/or environmental restoration opportunities.
3. Define a street plan, land use and open space concept plan.
4. Identify needed infrastructure improvements and a strategy for phasing public and private investment to support the recommended vision or address deficiencies to serve existing development.
5. Identify future actions and policies that will enhance the quality of and facilitate further development of the recommended West Hayden Island vision.

Work Plan Organization

In order to undertake the following West Hayden Island work plan there will be different groups with different roles responsible for ensuring a collaborative process between the City, the Port and the stakeholders that meets the planning timelines of both the City and the Port. The groups are as follows:

- A. **Facilitator:** An independent facilitator will be hired by the City as a process manager to assist the Coordinating Committee (CC), Community Working Group (CWG), and Technical Advisory Group (TAG), facilitate CWG meetings and help structure and run other aspects of the citizen involvement program. This person will report to and work with the Coordinating Committee.
- B. **Coordinating Committee (CC):** The CC will at a minimum be comprised of a Principal Planner and a Senior Planner from the Bureau of Planning and Sustainability; the Watershed Division Manager from the Bureau of Environmental Services; and the Senior Manager, Transportation and Land Use Policy, Associate Planner and the Community Affairs Manager, Port of Portland. This committee will meet regularly to coordinate with the facilitator to schedule the work of CWG and TAG and determine the timing of the information brought before the committee. The CC is also responsible for sharing information with and requesting input from the various City bureaus, Port departments and appropriate regional, state, and federal agencies.
- C. **Community Working Group (CWG):** The City and the Port will jointly form a citizens planning advisory group to advise both the Port's long range planning process for WHI and the City's legislative land use planning processes. The CWG will generally represent the interests of the potential stakeholders of West Hayden Island. The CWG will review project studies and reports, make recommendations to the staff and the Planning Commission, City Council and Port Commission at milestone stages in the process.
- D. **Technical Advisory Pool (TAP):** The City will form a technical advisory group to advise the City, Port and CWG on technical information necessary to undertake the work plan as described below. The TAP will provide baseline information to project consultants and review draft documents for technical completeness.

Work Plan and Target Timeline for West Hayden Island Annexation

NOTE: The start and end dates are estimates that appear to be reasonable at the time this IGA was approved. Due to the many variables inherent in these studies and programs, the dates may vary considerably from these estimates. The City and the Port agree to make a good faith effort to initiate these studies and programs approximately as indicated on this exhibit.

Task	Brief Description	Estimated Start Date	Estimated End Date	Deliverable	Responsible Party (ies)	Other Involved Party (ies)
Project Start-up and Management	Prepare request for proposals, recruit and select facilitation consultant	July 2008	August 2008	Consultant Contract COMPLETE	City and Port	
	Finalize project scope and structure	December 2008	May 2009	Signed IGA	City and Port	
	Form Community Working Group and Technical Advisory Group	January 2009	February 2009	Members recruited and confirmed COMPLETE	City and Port	
	Ongoing project and consultant management	September 2008	Throughout project		City	
Initial Studies, Work Scopes and Technical Analysis Review	Hold initial meetings of CWG. Facilitator explains regulatory framework to CWG members and establishes roles and ground rules.	February 2009		CWG Charter COMPLETE	Facilitator	
	Develop scope of work and initiate the economic study. This study will include a forecast of marine industrial needs, and is one component of the overall technical evaluation for Goal 9 requirements.	March 2009	July 2009	Consultant contract with City	City and Port	Facilitator will lead discussions to solicit input on scope of work from CWG and TAP

Task	Brief Description	Estimated Start Date	Estimated End Date	Deliverable	Responsible Party (ies)	Other Involved Party (ies)
	Develop scope of work and initiate the environmental study.	March 2009	July 2009	Consultant contract with City	City and Port	Facilitator will lead discussions to solicit input on scope of work from CWG and TAP
	Review Draft Reports and Finalize Reports	September 2009	November 2009	Draft and final consultant reports and summary of conclusions	City and Port review draft reports	Draft reports presented to CWG Facilitator leads discussions with CWG members to solicit input on drafts. Consultant to finalize reports based on direction from City and Port.
Define Concept Plan Objectives, Evaluation Factors and Program Needs						
	Develop goals and objectives statement for the concept plan	May 2009	June 2009	Agreed goals and objectives statement	City and Port	CWG discussions with Facilitator
	Review existing conditions	April 2009	June 2009	Agreed baseline information	City and Port	CWG and TAP discussions with Facilitator
	Develop a program statement for marine facility functions, open space and recreational areas	July 2009	September 2009	Agreed program statement	City and Port	CWG discussions with Facilitator

Task	Brief Description	Estimated Start Date	Estimated End Date	Deliverable	Responsible Party (ies)	Other Involved Party (ies)
	Develop evaluation factors to be used to assess the impacts of plan alternatives based on Economic, Social, Environmental and Energy (ESEE) analysis approach	September 2009	November 2009	Agreed evaluation factors	City and Port	CWG, and TAG discussions with Facilitator
Concept Plan, Alternatives,	Develop and evaluate up to three concept plan alternatives to illustrate the range of possibilities	September 2009	November 2009	Concept plan alternatives	City	Facilitator leads discussions to solicit input from CWG, Port and TAP
	Review the range of concept plans with the CWG, TAG and the public	October 2009	November 2009	Final concept plans	City	Facilitator leads discussions to solicit input from CWG, Port and TAP and community conversation
	Undertake more detailed analysis, including ESEE, of specific topics as required to supplement or support concept plan	October 2009	November 2009	Draft ESEE and agreed reports as needed	City and Port	Input as needed from TAP
	Based on this review, develop a single draft concept plan	November 2009	December 2009	Draft concept plan	City and Port	Facilitator leads discussions with CWG to solicit input
	Review the draft concept plan, including ESEE	December 2009		Community Outreach Effort	City and Port	CWG, TAP
	Produce a final concept plan and ESEE report	January 2010		Final Concept Plan and ESEE	City	CWG, Portland TAP
	Review concept plan and ESEE with Planning Commission	February 2010		Final Concept Plan and ESEE presentation to Planning Commission	City and Port	CWG

Task	Brief Description	Estimated Start Date	Estimated End Date	Deliverable	Responsible Party (ies)	Other Involved Party (ies)
Plan District and Annexation	Develop draft plan district text	February 2010	March 2010	Draft plan district	City	Present draft plan district to CWG, Port and TAP with facilitator
	Community Outreach on Plan District	March 2010	April 2010	Public Open Houses	City	
	Planning Commission hearing and decision	April 2010	May 2010	Final plan district and annexation plan presentation to Planning Commission	City	Port and CWG
	City Council hearing and decision	June 2010	July 2010	Final plan district and annexation plan report to City Council	City	Port and CWG

EXHIBIT 2

COMMUNITY WORKING GROUP CHARTER

Background

West Hayden Island is currently located in unincorporated Multnomah County, zoned Multiple Use Forest 19 (MUF19). Since 1996, the City of Portland, through intergovernmental planning agreements with Multnomah County, has regulatory authority over planning activities related to the property. In order to determine the urban status for the property and establish use and development regulations to guide future development, the City of Portland with the Port of Portland will need to prepare an area plan that applies the City of Portland Comprehensive Plan and Zoning designations to the property to become effective upon annexation.

As part of all planning processes the City of Portland must balance potential future uses against the Oregon Statewide Planning Goals, the Metro Urban Growth Management Functional Plan (UGMFP), and the City of Portland Comprehensive Plan Goals and Policies. In 1983, West Hayden Island was brought into the Urban Growth Boundary for marine industrial land use purposes. WHI is designated as Marine Industrial Land on the Metro 2040 Growth Concept Map and as a Regionally Significant Industrial Area on the Title 4 map. WHI is also identified by Metro as a high value riparian area and a Habitat of Concern in the regional inventory, and as a Moderate Habitat Conservation Area in Title 13

It is the City of Portland's intent to honor and address these plan designations for West Hayden Island. The City's existing policy is for West Hayden Island to be a significant asset for both its industrial and natural resource values.

Charge

The charge of the CWG is to advise City Council on how marine industrial, habitat, and recreational uses might be reconciled on West Hayden Island; and, if the CWG determines that a mix of uses is possible on WHI, to recommend a preferred concept plan.

The City is seeking the advice of a Community Working Group to determine how these diverse designations and policies might be reconciled to achieve both marine industrial and natural resources benefits.

Roles

The WHI CWG:

- Advises on the scope of foundation studies
- Participates in consultant selection
- Interacts with the consultant during the conduct of the foundation studies and participates in review of the studies
- Advises on development of the plan for West Hayden Island:
 - Principles and goals
 - Criteria for evaluation of concepts
 - Evaluation of alternatives
 - Preferred option(s)
- Advises on the requirements and standards that will guide future development activities.

Officers

The WHI CWG will be led by a Chair appointed by Mayor Sam Adams. The chair will assist the Coordinating Committee and the facilitator to develop agendas for the CWG deliberations, and will serve as spokesperson for the group when presenting findings to the Port and Planning Commission and City Council.

ORDINANCE No. 182856

* Authorize Intergovernmental Agreement with the Port of Portland for up to \$440,000 for planning services to prepare a West Hayden Island plan and possible annexation proposal, and provide for payment (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. Through a series of agreements the City of Portland and the Port of Portland have a long history of cooperative planning to enhance the region's economy and quality of life, protect and conserve natural resources, maintain an adequate supply of marine industrial land, and improve the region's access to national and global markets.
2. West Hayden Island was brought into the urban growth boundary in 1983 for the purpose of satisfying a regional need for marine industrial facilities.
3. The City acknowledges the future importance of WHI in the bi-state regional economy and its importance in the regional ecosystem and open space network.
4. Metro Title 13, Nature in Neighborhoods, code section 3.07.1330(B)(4)(a) states the City shall develop a district plan in cooperation with the Port of Portland.
5. Anticipating eventual annexation of West Hayden Island, since 1996 the City of Portland has provided planning and zoning services to West Hayden Island through an Intergovernmental Agreement with Multnomah County (Ordinance No. 170585).
6. The City has a critical interest in ensuring that any future urbanization of this site complements the surrounding transportation network and development pattern.
7. The City and the Port of Portland now desire to enter into a formal agreement to prepare a long term vision for West Hayden Island.

NOW, THEREFORE, the Council directs:

- a. The Mayor and Auditor are hereby authorized to enter into an intergovernmental agreement with the Port of Portland in a form substantially in accordance with the IGA in Exhibit A (including Exhibits 1 and 2) to provide planning services for West Hayden Island in preparation for possible annexation and adoption of City Comprehensive Plan and zoning designations.
- b. The Mayor and Auditor are hereby authorized to accept funding through said agreement from the Port of Portland in an amount up to \$440,000 for planning services.

Section 2. The Council declares that an emergency exists because delay in funding would interrupt a series of steps necessary to implement the agreement and to complete the majority of work in the 2009/2010 fiscal year; therefore, this ordinance shall be in full force and effect from and after its passage by Council.

Passed by the Council, MAY 28 2009

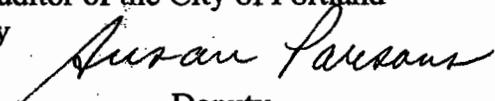
Mayor Sam Adams

Prepared by: Eric Engstrom

Date Prepared: May 12, 2009

GARY BLACKMER
Auditor of the City of Portland

By


Deputy