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Contact: Steve Johnson
(503) 944-7053

PORT ANNOUNCES RIVERGATE ENVIRONMENTAL ENHANCEMENT AGREEMENT AND SETTLEMENT

The Port of Portland today announced a tentative agreement on an environmental enhancement package for the Rivergate Industrial District, which will create and restore wetlands, re-vegetate the banks of the Columbia Slough, provide a recreational trail, and remove fill to create additional wildlife habitat. The package completes mitigation for fill which allowed the development of the Rivergate Industrial District over the past 30 years, and settles a citizen lawsuit against the Port and five federal agencies.

Mitigation and enhancement projects to be carried out by the Port under the agreement include:

- ♦ Removing fill material from a total of approximately 30 acres in Rivergate, down to the level of native soils. This re-creates habitat for native wildlife.
- ♦ Restoring and re-vegetating streambanks in the Leadbetter Peninsula area, using native species such as willow, alder, and other riparian vegetation.
- ♦ Enhancing wetland and riparian areas north of Ramsey Lake.
- ♦ Creating a new segment of the 40-Mile Loop Trail cutting beneath the Lombard Street Bridge, and thus linking Kelley Point Park to the rest of the trail system.
- ♦ Creating a vegetation buffer between the Ramsey Rail Yard and the Ramsey Lake area.

The agreement resolves issues left open by a 1989 "Cooperative Agreement" among the Port and the region's environmental regulatory agencies, concerning the mitigation to be performed in the Rivergate area.

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Page 2

The agreement also settles a lawsuit brought by a citizen, Michael Jones, against the administrators of the Port of Portland, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Coast Guard, the U.S. Department of Transportation, and the Federal Highway Administration in 1997. As a result of the lawsuit, several flaws in the Rivergate permitting and fill process were identified. The lawsuit will be settled by entry of a consent decree under which the Port will pay a stipulated penalty of \$50,000 and will reimburse the plaintiff \$50,000 for his costs in bringing the lawsuit. The Port will also provide \$285,000 for a further environmental enhancement project to be selected by the Smith & Bybee Lakes Management Committee. This will substitute for a proposed water control structure, originally contemplated by the 1989 Cooperative Agreement, which proved not to be feasible.

"We're pleased to have these questions resolved, and we're looking forward to getting started with the projects," said Bill Bach, Manager of Property & Development Services for the Port. "We are particularly pleased that the package enhances significant wildlife corridors. By removing fill down to native soils as part of this work, we give native plant species the best opportunity to thrive and create valuable habitat."

Notice of the consent decrees implementing the proposed agreement will be published in the Federal Register, and will then be subject to a public comment period before being signed by the federal government and submitted to the court for final approval.

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RIVERGATE ENVIRONMENTAL ENHANCEMENT
AGREEMENT AND SETTLEMENT
ADDITIONAL BACKGROUND

Why is the Port doing this mitigation?

The projects are mitigation for fill material placed in the Rivergate Industrial District over a 30-year period, from the mid-1960s to the mid-1990s. The Rivergate Industrial District includes approximately 1,800 acres of industrial property, including the Port's Marine Terminals 5 and 6. Rivergate provides a home to many metro-area businesses, including warehousing and distribution, food processing, and manufacturing enterprises. More than 5,000 jobs for the region's families are produced by the industrial activities within Rivergate.

The Port developed Rivergate under a series of dredge and fill permits issued by the Corps of Engineers from 1967 to 1991. Rather than specifying particular mitigation projects in each individual permit as is normally the case, the Port and the agencies involved entered into a "Cooperative Agreement" in 1989 to set a general framework for mitigation. Some of the original mitigation concepts turned out not to be feasible, and the agencies never reached agreement on appropriate alternate mitigation measures. Under this agreement, the federal government will issue a new permit which specifies in detail the mitigation to be performed and the schedule.

What were the issues in the lawsuit?

The lawsuit, filed by Michael Jones against the Port of Portland, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Coast Guard, the U.S. Department of Transportation, and the Federal Highway Administration, raises a number of challenges to the process by which permits were issued. Among other issues, the lawsuit

claims that there were incomplete permits; that fill material was placed outside the permitted boundaries; and that the 1991 permit was not a valid fill permit under the Clean Water Act.

How were those issues resolved?

With respect to the 1991 permit, the Port had been informed by the Corps in 1997 that an administrative error had occurred in connection with the processing of this permit, but that it was nevertheless a valid Clean Water Act fill permit. This was challenged in court, and the federal government then took the position that the permit was not a valid fill permit. A federal magistrate agreed. The Port chose not to challenge this ruling, but rather to negotiate an appropriate mitigation package.

To implement the settlement, a cross-claim will be filed by the federal agencies, and the Port will enter into two consent decrees which will be subject to approval by the federal court.

As part of the settlement of the lawsuit, neither the Port nor the federal agencies involved are admitting any liability or violations of law.

Will the proposed Multnomah County jail site in Rivergate be affected?

The location of the jail building will not be affected by this agreement. However, the agreement will require some changes to the vegetated buffer areas surrounding the facility. The buffer areas will still exist, but will slope down more gently toward Bybee Lake.

How was this package of mitigation measures developed?

The package was the result of extensive discussions between the Port, representatives of the federal agencies involved, and Mr. Jones, who brought the lawsuit. It represents the parties' best judgment as to the mitigation measures appropriate for Rivergate, and will significantly

enhance habitat and wetlands in the area. The consent decrees implementing the agreement will be subject to a public comment period after publication of notice in the Federal Register.

When will the mitigation be complete?

The agreement contains specific schedules for fill removal and revegetation. The projects will be completed in approximately three years, and will be monitored and maintained by the Port after that.