



**Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621**

November 4, 2022

In reply refer to: TERR

BPA Case No.: 20230004
Tract No.: WILWF-WL-14
Tract Name: Deed of Conservation Easement (Minto Island) Marion, County, OR.
ADNO: N/A
Location: N/A Str. No(s): N/A

City of Salem
Attn: Jennifer Mongolo, Senior Natural Resource Planner
555 Liberty Street SE, Room 325
Salem, OR 97301-3503

Non Transferable Land Use Agreement
SUPERCEDING AND TERMINATING BPA CASE NO. 20220158
Use of BPA's Conservation Easement Area

This Land Use Agreement ("Agreement") supersedes and replaces in its entirety BPA Case No. 20220158. This Agreement is entered into by and between the United States of America, Department of Energy, Bonneville Power Administration ("BPA") and The City of Salem, an Oregon municipal corporation ("City"). BPA and the City are herein referred to as the "Parties".

On September 25, 2013, the City conveyed to the United States of America, acting by and through the Bonneville Power Administration ("BPA"), a Deed of Conservation Easement ("Conservation Easement") in, over, under, upon, and across the Minto Island ("MICA") property located in Marion County, Oregon under Reel 3547, Page 422 September 30, 2013. The property subject to this Agreement is described therein. Additionally, on September 18, 2013, the City of Salem and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("DEQ") entered into an "Easement and Equitable Servitudes" agreement that runs with the property restricting certain uses of the property as described therein.

The Conservation Easement and the Consent judgement require that the property be limited to "management of the property for wildlife habitat" and "to provide limited trail access for passive recreation". The City desires a few exceptions to address certain public activities.

Case No.: 20230004
Tract No.: WILWF-WL-14

Section II. L.14 of the Conservation Easement states that “the Granting of any property interest or rights in the Protected Property, including easements, permits, licenses, and leases without the prior written consent of the Grantee is prohibited.” Additionally, Section II. H. requires that the Management Plan for the Protected Property describes “the uses and activities that the Grantor identify in the Management Plan the allowable use and access by the public of the Protected Property if public access is appropriate”; and Section II. I. 2. states “consistent with the EES, Grantor will be responsible for installing and maintaining warning signs and/or fences at the Protected Property near paths so as to prohibit activities in or around the soil caps topping the wastewater ponds and landfills’. At this time, there have been 6 signs installed.

The Land Management Plan that was acknowledged by BPA on May 31, 2016 for MICA contains descriptions for public use and the City now desires to alter certain aspects of the public use activities previously described and acknowledged in the Land Management Plan.

The City now proposes the following Land Management Plan changes for 2022/2023:

- **Changing the primary bird nesting season to March 1- July 31 (LMP has this as March 1-August 31.)**
 - The species of concern for this site are willow flycatchers, and the chicks are typically fledged by the end of July.
 - As of 2022, there are no nesting bald eagles or ospreys directly on the site or near the trail.
- **Allowing two large events in bird nesting season (previously one large event.)**
 - It is recognized that the nature of the footbridge allows public access to the MICA property which allows for a steady level of public use during nesting season.
- **Increasing the size of the large events up to 3,000 participants (previously 1,000 participants.)**
 - Up to 3,000 people per event will be ok for the 2022/2023 season

Subject to the terms and conditions set forth in this Agreement, BPA acknowledges changes to the agreed up on activities of City’s use of the BPA Conservation Easement Area for the purpose proposed by City as described herein, subject to conditions and in the manner and at the locations described in this Agreement including in **Exhibit A “Mitigation Measures”** and **Exhibit B “Minto Island Conservation Restrictions For Events”**.

In consideration of BPA’s concurrence, City agrees to the following:

1. The Mitigation Measures described in Exhibit A shall be completed by December 31, 2022. This generally describes the 25’/50’/100’ buffer included in part of acknowledged Land Management Plan “Action Plan” for 2022. The Land Management Plan included “Replace blackberries with dense native plantings to provide a buffer along the edge of main paved trail. The required Mitigation Measures are further detailed in Exhibit A” Mitigation Measures”. The work shall start in 2022 and shall be completed by December 31, 2022.
2. Exhibit B Minto Island Conservation Restrictions for Events restrictions will be adhered to except for as expressly permitted through this Agreement.

3. A maximum of two large events shall occur within the main bird nesting season which shall be considered to be March 1 through July 31.
4. A maximum of two large events are allowed per bird nesting season, not to exceed 3,000 participants per event.
5. There will be no stopping or drink stations along the pathway through MICA. Restriction 1.D. applies to all events, all times of year.
6. All temporary items supporting the events, such as chemical toilets, additional garbage cans, recycling bins, water/support stations, and lighting must be located outside of MICA.
7. The City shall include in its 2022 and 2023 annual report to BPA, details of the events that occurred and follow up on any issues as a result of the activities.
8. This Agreement does not grant any right, privilege, or interest in land, and does not modify, change, or otherwise alter the rights BPA acquired by its Deed of Conservation Easement or its Transmission Facilities. Loss of the privileges granted by this Agreement is not compensable to City.
9. The event activities must be restricted to the trail itself and the City will be responsible to ensure that people are prohibited from leaving the trails.
10. There may be other uses of the property located within the same area as City's restoration work. This Agreement is subject to such superior rights and the City is responsible for obtaining any further permissions needed.
11. This Agreement is valid only if City's proposed use is conducted in conformance with the terms of this Agreement and all attached Exhibits. Relocations or changes require BPA's prior written approval. Failure to obtain the prior written approval of BPA prior to making changes to City's use shall result in the termination of this Agreement.
12. City acknowledges and agrees that City's use of the property is subordinate to BPA's Conservation Easement and rights therein.
13. City agrees to abide by and comply with all applicable Federal, State and local laws and regulations, including, but not limited to building and safety codes, entities that regulate City, NEPA and all applicable environmental regulations.
14. BPA has no duty to inspect or to warn of hazards. City shall have the continuing responsibility for the protection of people and equipment in its use.
15. This Agreement is entered into with the express understanding that it is not assignable or transferable to other parties without the prior written consent of BPA.
16. City agrees to assume risk of loss, damage, or injury which may result from City's use of the BPA Conservation Easement area.

17. Any damage to BPA's property caused by or resulting from City's use of the BPA Conservation Easement area may be repaired by BPA, and the actual cost of such repair shall be charged against and be paid by City.

18. City's contact information:

NAME: City of Salem Attn: Jennifer Mongolo, Senior Natural Resource Planner
ADDRESS: 555 Liberty Street SE, Room 325
Salem, OR 97380
PHONE: 503-588-6211 ext. 7348
EMAIL: JMongolo@cityofsalem.net

City agrees to notify BPA in writing of any changes to the above listed contact information.

19. BPA's contact information:

NAME: BPA – Attn: Heidi Haserot/TERR-
ADDRESS: PO Box 3621
Portland, OR 97208-3621
PHONE: 503.230.3115
EMAIL: hmhaserot@bpa.gov

20. All exhibit are attached and made a part hereof.

21. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument. Electronic or digital signatures shall be deemed original signatures for purposes of this Land Use Agreement. Said counterparts may also be transmitted by one Party to the other by facsimile or electronic mail.

22. Activities are expected to result in income, any and all proceeds are to be deposited in the Stewardship Account for this property.

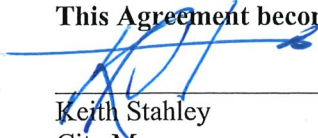
23. The City is to update their management plan by April of 2024, and which plan must describe impacts from the events, bridge impacts and public use activities. The Parties agree to meet in October 2023, ahead of the new Land Management Plan (LMP), to discuss changes/actions need to the LMP and to discuss results of monitoring public use and mitigation measures.

24. The Parties Agree that Land Use Agreement BPA Case No. 20220158 is hereby terminated.

DEQ has been contacted by the City of Salem and has agreed that the described activities are acceptable to the DEQ. Their letter of concurrence is included as **Exhibit C “DEQ Letter”**.

This Agreement terminates in December 31, 2023. Activities beyond this date will require a new Land Use Agreement and a future determination of consistency will be determined upon the outcomes of the prior year activities.

This Agreement becomes effective upon the signature of the Parties.



Keith Stahley
City Manager
City of Salem



Date

This Agreement Is Hereby Authorized:

Heidi Haserot
Realty Specialist
Bonneville Power Administration

Date

BPA seeks help maintaining the integrity of the electrical transmission system. Please report any vandalism or theft to the BPA Crime Witness program at 1-800-437-2744. Cash rewards of up to \$25,000 will be paid should information lead to the arrest and conviction of persons committing a crime.

If you have any questions or concerns, please notify a BPA Realty Office. You may contact Heidi Haserot ("BPA Representative") by telephone at 503-230-3115 or send written correspondence to the address listed at the top of this Agreement.

EXHIBIT A MITIGATION MEASURES

Per the Land Use Agreement the following shall be completed by December 31, 2022:

1. The City shall plant a buffer 20-25 feet in width, allowing for roughly four rows of vegetative strips, along both sides of the trail along the sides of the trail as indicated on the attached map. This 20'-25' buffer was part of the action in the MICA Land Management Plan Page 25.
2. The vegetated buffer should consist of native vegetation appropriate for the site such as willows, spirea, elderberry, snowberry, sedges, rushes or other vegetation that can flourish given the site conditions on MICA.
3. The target survival rate is 80% survival rate after one year. If this is not achieved replanting will be needed.
4. WWMP and/or BPA staff are available to meet pre-construction to agree on the buffer placement, assist with plant species selection lists.
5. The City shall inspect and address the buffer post installation to assure 80% survival rate and include the information and activities in the annual report to BPA.

Buffer Area on MICA

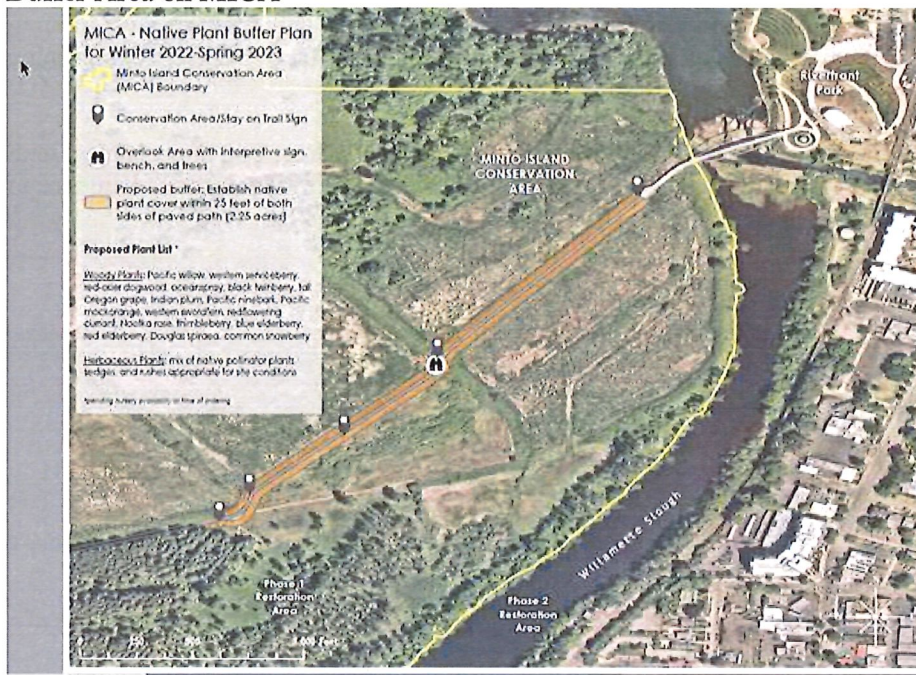


Exhibit B

MINTO ISLAND CONSERVATION AREA RESTRICTIONS FOR EVENTS

MINTO ISLAND CONSERVATION AREA RESTRICTIONS FOR EVENTS

Introduction

Minto-Brown Island Park is a 1,205-acre natural area located in the Willamette River floodplain. Located near downtown Salem, the park is intended to protect and preserve habitat while supporting passive recreation uses at a level that does not adversely impact the natural resources. Minto-Brown Island Park is ecologically complex, with such features as sloughs, creeks, ponds, wetlands, riparian areas, mixed forests, prairies, Oregon white oak savannas, and open fields. It provides important habitat for Western pond and painted turtles. The park also contains soft and hard surfaced trails, play equipment, picnic facilities, a shelter, and an off-leash dog area.

Located within Minto-Brown Island Park is the 307-acre Minto Island Conservation Area (MICA). The primary goal of the MICA is to protect, conserve, and enhance the diverse mix of existing natural habitats and species in the area. To accomplish this goal, the City of Salem has established the following restrictions and guidelines as a pilot program for all events conducted within the MICA.

Definitions

“Event” means any planned activity that requires one or more permits from the City of Salem and which involves 150 or more participants.

“Event organizer” means the person(s) overall responsible for conducting the event.

“MICA” means the Minto Island Conservation Area, a 307-acre natural area that is generally located at the northern end of Minto-Island Brown Park, beginning at the southern landing of the Peter Courtney Minto Island Bridge and extending to the remaining two-thirds of the park south of the MICA (see map Page 4).

“Paved trail” means the hard-surfaced multi-use path located inside the MICA that runs approximately 0.8 miles (1.3 km) between the southern landing of the Peter Courtney Minto Island Bridge and the remaining trail system of Minto-Brown Island Park (see map).

“Week” normally means Monday to Sunday.

Year-Round Restrictions

1. The following restrictions apply for all events in the MICA:
 - A. Additional permit fees may apply.
 - B. The event must start and finish outside of the MICA at a location approved by the City to minimize impacts to other park users.

MINTO ISLAND CONSERVATION AREA RESTRICTIONS FOR EVENTS

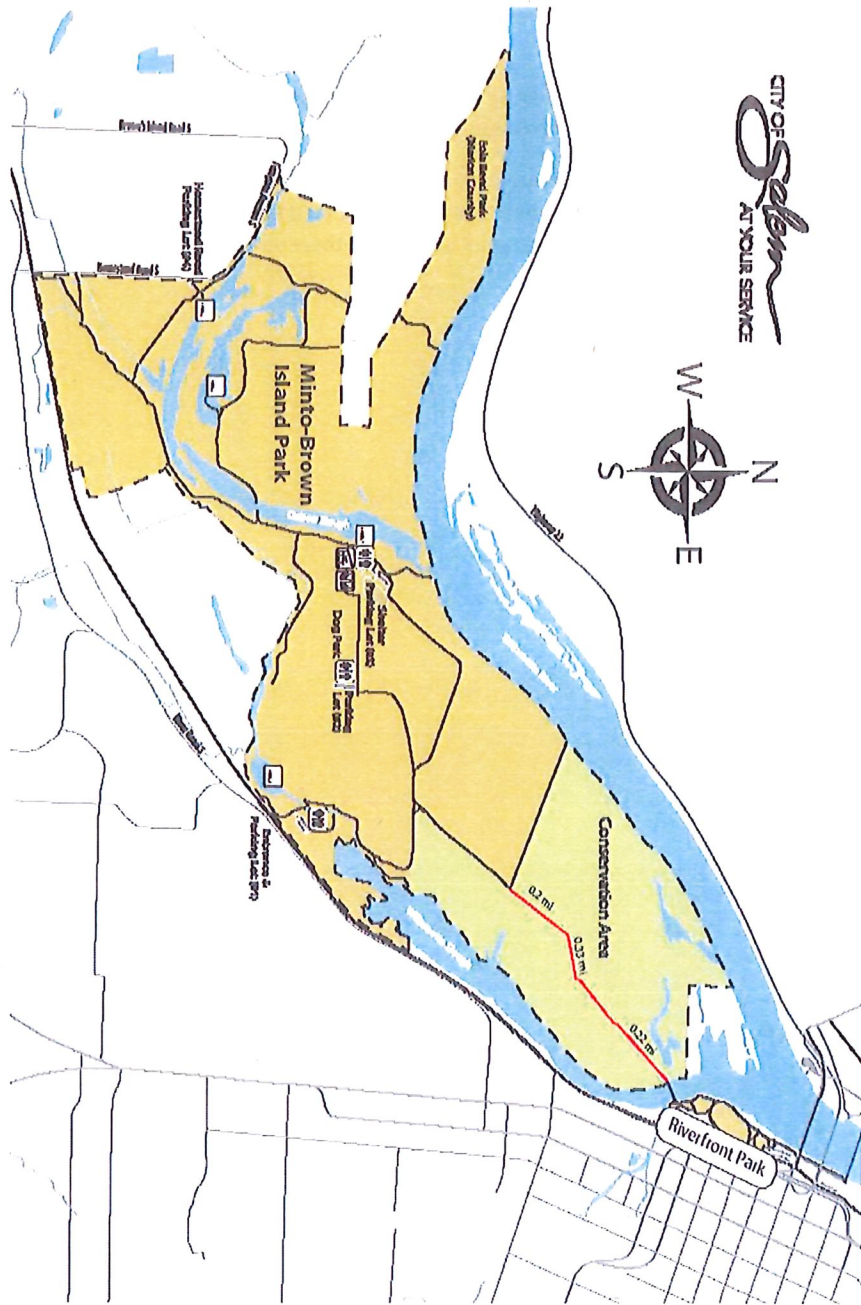
- C. All event participants and spectators must stay on the paved trail. An exception may be granted if the event is a City-approved habitat enhancement project compatible with the MICA Management and Conservation Plan.
- D. All temporary items supporting the event, such as chemical toilets, additional garbage cans, recycling bins, water stations, and lighting must be located outside of the MICA.
- E. No horns, musical instruments, amplified sound, or noisemakers are allowed inside the MICA.
- F. Signs, flags, and banners may not be used inside the MICA. Small temporary course route signage or cones may be used on pathways with prior approval by the City.
- G. Lighting may not be used inside the MICA.
- H. Additional temporary fencing may be required inside the MICA at the discretion of the City. If temporary fencing is required by the City, the event organizer will be responsible for costs associated with installing and removing the temporary fencing.
- I. The event organizer is responsible for ensuring information is provided to participants regarding restrictions in the MICA.
- J. No bicycle races or portions of bicycle races may be conducted in the MICA.
- K. Unless otherwise approved by the City, events must begin no earlier than 8 a.m. and must conclude no later than 4 p.m. Event set up and take down may be conducted outside of these times.

March 1- August 31 Bird Nesting Season Restrictions

2. In addition to above restrictions, the following restrictions apply for all events conducted inside the MICA during the primary bird nesting season of March 1-August 31:
- A. The maximum number of registered participants in any one event is 400.
 - B. Only one event may be conducted on any given week. Further, events cannot be conducted on successive weeks. If an event is conducted on a Friday or Monday designated holiday, no other event may be conducted that week.
 - C. Once per season, one large event exceeding 400 participants but not exceeding 1,000 participants, may be allowed and count as an event week. Additional temporary fencing will be required in the MICA for large events.

MINTO ISLAND CONSERVATION AREA RESTRICTIONS FOR EVENTS

- D. Event reservations, scheduling, and prioritization will follow current practices of the City.
- E. The event route must be designed such that participants pass through the MICA no more than twice, as in one outbound and one inbound leg of a course.
- F. Event organizers must provide a minimum of three trail monitors within the MICA. The trail monitors shall be located along the paved trail and will be responsible for ensuring participants and spectators comply with these restrictions.



MINTO ISLAND CONSERVATION AREA RESTRICTIONS FOR EVENTS

CITY OF Salem
AT YOUR SERVICE



EXHIBIT C DEQ LETTER



Oregon

Kate Brown, Governor

Department of Environmental Quality
Western Region Eugene Office
165 East 7th Avenue, Suite 100
Eugene, OR 97401
(541) 686-7838
FAX (541) 686-7551
TTY 711

January 14, 2022

Hannah Dondy-Kaplan
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

**RE: Proposed changes to permitted recreational activities on Minto Island, Salem
Boise Cascade – Minto Island, ECSI #355**

Dear Hannah Dondy-Kaplan,

The Oregon Department of Environmental Quality was contacted by Patricia Farrell from the City of Salem regarding proposed changes to permitted recreational activities on the Minto Island Conservation Area. DEQ was forwarded the changes requested by the City of Salem, as well as your email requesting that DEQ provide a record of concurrence with the proposed changes in light of the Conservation Easement and the Consent Judgement associated with this Protected Property.

DEQ staff reviewed the information provided by the City, the Deed of Conservation Easement, the Consent Judgement and the Easement and Equitable Servitudes. DEQ has determined that the proposed activities will not materially harm or interfere with the conservation values of the Protected Property as the events will only be allowed on the previously approved paved pathway, required signage is in place, and measures will be taken to ensure that event organizers and participants are aware of the requirement to stay on the paved pathway.

DEQ concurs that the proposed changes to the size and frequency of recreational events are consistent with the Conservation Easement, the Consent Judgement and the Easement and Equitable Servitudes for the Protected Property.

If you have any questions regarding this letter, please contact Susan Turnblom at 541-687-7464 or by email at susan.turnblom@deq.oregon.gov.

Sincerely,

Michael E. Kucinski, Manager
Western Region Cleanup and Emergency Response

cc: ECSI #355 File

