

AGREEMENT BETWEEN
THE OREGON DEPARTMENT OF STATE LANDS
AND
THE US ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT

THIS AGREEMENT is entered into this 4 day of September, 2020, by and between the DEPARTMENT OF THE ARMY, represented by the U.S. Army Corps of Engineers (hereinafter the "Corps") Portland District Engineer, and the Oregon Department of State Lands (hereinafter the "DSL"), represented by Vicki Walker, Director of the DSL.

WITNESSETH, THAT:

WHERE AS, the Department of the Army is authorized to issue permits pursuant to Section 404 of the Clean Water Act (CWA) and/or Sections 9 or 10 of the Rivers and Harbors Act of 1899 for the placement of dredge or fill material into waters of the United States, so long as, the impacts are avoided and minimized to the maximum extent practicable and the Corps requires appropriate and practicable mitigation to offset unavoidable adverse impacts to existing aquatic resources in accordance with 33 C.F. R. §§320 and 332; and

WHERE AS, the Corps approved the "Oregon Department of State Lands Statewide Fee-in-Lieu Instrument" (Instrument) on February 19, 2009, to provide a source for compensatory mitigation for various CWA Section 404 permits, modification of which requires written agreement between DSL and the Corps; and

WHERE AS, a recent Aquatic Resources Mitigation Framework initiative encouraged existing sponsors of mitigation banks and ILF program mitigation sites to voluntarily transition their mitigation sites to a functions and values based mitigation approach; and

WHEREAS, DSL elected to voluntarily transition their Half Mile Lane (HML) ILF mitigation site to a functions- and values-based mitigation approach using the Stream Function Assessment Methodology (SFAM) and Oregon Rapid Wetland Assessment Protocol v.3.2 (ORWAP);

NOW, THEREFORE, the parties hereto agree to amend the Instrument, including Corps' approved modifications dated April 3, 2012, with the following particulars and no others:

ARTICLE I - PURPOSE AND AUTHORITY

In accordance with the 2008 Federal Compensatory Mitigation Final Rule this agreement is entered into by and between the Corps and the DSL (collectively referred to as "the parties") for the purpose of amending the Instrument to reflect the transition of the HML ILF mitigation site from a ratio-based credit approach to a functions and values based credit approach. 33 C.F.R §332.

ARTICLE II – ROLES AND RESPONSIBILITIES

A. The Oregon IRT, consisting of the Corps, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Oregon Department of Environmental Quality, and Oregon Department of Fish and Wildlife reviews any instrument or instrument amendment in accordance with their roles as defined by 33 C.F.R. § 332. The Corps, as IRT chair, recommended the IRT approve this amendment to ILF Instrument.

B. As sponsor of the Oregon Statewide ILF Instrument, DSL proposed transitioning the HML ILF mitigation site from a ratio-based credit system to a functions and values based credit currency and marketplace using ORWAP and SFAM. DSL will serve eligible applicants seeking function-based mitigation credits if the applicant follows the state rule for mitigation eligibility and accounting (see Oregon Administrative Rule 141-085-0680 to 141-085-0694 and Protocol for Eligibility and Mitigation Accounting located in the DSL Removal-Fill Guide, Chapter 8).

ARTICLE III – AMENDMENTS TO THE HALF MILE LANE ILF MITIGATION SITE CREDIT STATUS AND SALES

A. Credits for the HML project, though originally determined based on DSL's credit ratios and functional lift (HML ILF Mitigation Plan Section X), will be based on functions and values.

B. DSL analyzed its mitigation site using ORWAP and determined that under a functions and values based credit system the same number of credits are available as were previously identified and authorized for sale under the ratio-based credit system. The Corps independently reviewed the analysis with the IRT and determined that DSL will retain the same credit release schedule found in the previous HML ILF Instrument, as well as, the same credit balance that remains at the time this agreement is signed.

C. To the extent that additional credits are required to account for risk, accuracy in the methods, and temporal loss, and to ensure environmental gains, they shall be functions- and values-based credits instead of ratio-based credits. (See HML ILF Mitigation Plan Section X, Determination of Credits, Subsection 10.4, Credit Sales.)

ARTICLE IV – HALF MILE LANE AND WATERSHED PRIORITY APPROACH

The HML site was identified in the ILF Instrument as meeting some of the most important restoration priorities for the Willamette and Tualatin watersheds. By providing priority functions identified for the watershed at a high level, the HML site meets the two primary criteria for the watershed approach included in the state rule for mitigation eligibility and accounting (see Oregon Administrative Rule 141-085-0690 (4) and Protocol for Eligibility and Mitigation Accounting located in the DSL Removal-Fill Guide, Chapter 8).

ARTICLE V – RIBITS

DSL accepts the posting of the HML ORWAP assessment functions and values scores and watershed priority information to the DSL regulatory website and Corps' Regulatory In-lieu Fee and Bank Information Tracking System (RIBITS).

ARTICLE X - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the Corps and DSL regarding implementation of this Agreement, the Corps and DSL shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution that is mutually acceptable.

ARTICLE XI - ADMINISTRATION

This agreement does not confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person. Nor does it diminish, modify, or otherwise affect the statutory or regulatory responsibilities and requirements of the signatories.

ARTICLE XII - EFFECTIVE DATE

This Agreement shall become effective when signed by the Oregon DSL and the Portland District Corps.

IN WITNESS WHEREOF, the parties hereto have executed modification to the Oregon Department of State Lands In-Lieu Fee Program Instrument and amendment of the Mitigation Plan for Half Mile Lane Project on the date herein below last written by the IRT Chair.



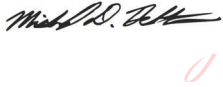
July 17, 2020

Vicki L. Walker, Director
Oregon Department of State Lands

Date

INTERAGENCY REVIEW TEAM

By the IRT Chair:



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Date: 2020.09.04 12:24:38
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Michael D. Helton, PMP
Colonel, Corps of Engineers
District Commander

Date