

**MITIGATION BANK INSTRUMENT for  
GREENHILL MITIGATION BANK  
(Compensatory Wetland Mitigation)  
Lane County, Oregon  
ODOT Key #17561  
CORPS PROJECT NWP-2011-383**

This Mitigation Bank Instrument (MBI), which describes the establishment, use, operation, maintenance and long-term management of the Greenhill Mitigation Bank (herein after, Bank) is an agreement made and entered into by and among the Oregon Department of Transportation (Sponsor), the U.S. Army Corps of Engineers, Portland District (Corps) and the Oregon Department of State Lands (DSL). The U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (USFWS), the Oregon Department of Environmental Quality (DEQ), and the Oregon Department of Fish and Wildlife (ODFW) have participated in reviewing this document for compliance with their respective agency policies, all herein also referred to individually or collectively as “Agency” or “Agencies” .

This MBI, including the following exhibits, which are hereby incorporated by this reference, constitutes the entire agreement:

"Exhibit A", Project Vicinity Map and Legal Description  
“Exhibit B”, Preliminary Title Report  
“Exhibit C”, Compensatory Mitigation Plan  
“Exhibit D”, Crediting and Debiting Procedures  
“Exhibit E”, Service Area Map and Description  
“Exhibit F”, Property Protection Instrument  
“Exhibit G”, Sample Credit Receipt  
“Exhibit H”, Sample Credit Ledger  
“Exhibit I”, Definitions

**I. PREAMBLE:**

**Whereas,**

**A. Purpose:** The purpose of this MBI is to establish responsibilities and standards for the establishment, use, operation, and long-term maintenance of the Bank. The Bank will be used for compensatory mitigation for unavoidable impacts to waters of the United States and/or waters of the State that result from activities authorized under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, Oregon’s Removal-Fill Law [Oregon Revised Statutes (ORS) 196.800-196.990 and Oregon Administrative Rules (OAR) 141-085] or to resolve enforcement cases resulting from activities subject to these regulations.

**B. Goals and Objectives:** Goals of the Bank are to enhance (re-habilitate), restore and protect 57.55 acres of Hydrogeomorphic (HGM) class slope/flat native wetland prairie. For the Cowardin system, the wetland type is classified as Palustrine Emergent (PEM). The Sponsor proposes three objectives:

1. Rehabilitate (enhance) wetland hydrogeomorphology and associated characteristic native biota.
2. Support long-term sustainable management of the Bank.
3. Contribute to recovery of sensitive species.

C. Bank Legal Description and Location: The Bank is located in Lane County, Township 17 South, Range 4 West, Section 30, Tax Lots 2201, 2202 and 2203. Latitude 44° 3' 28" N and Longitude 123° 12' 46"W. The Bank is located along Green Hill Road, immediately north of the Southern Pacific Railroad Line, near the City of Eugene, Oregon. The total area of the Bank is approximately 57.55 acres and is further described in Exhibit "A". Said parcels are hereinafter referred to as the "Property."

D. Property Ownership: The Sponsor has provided proof of ownership of the Property. A preliminary title report is included in Exhibit B, Preliminary Title Report. Any and all liens or easements on the Bank property are disclosed by the Sponsor to the Corps and DSL in Exhibit B. Any liens or easements that conflict with the mitigation purposes of the Bank shall be subordinated before the first credit release (See Exhibit D, Credit Release Schedule).

E. Establishment and Use of Credits: In accordance with the provisions of this MBI and upon satisfaction of the performance standards contained in Exhibit C, Mitigation Plan, and the mitigation credit ratio and schedule determined in Exhibit D, Crediting and Debiting Procedure, credits will be released to be used as mitigation in accordance with all applicable requirements of Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act and Oregon's Removal-Fill Law (ORS 196.800-196.990).

F. The Interagency Review Team: The Corps and DSL serve as co-chairs ("co-chair agencies", collectively) of the Interagency Review Team (IRT). The following agencies have agreed to serve on the IRT:

1. U.S. Fish and Wildlife Service (USFWS); and
2. U.S. Environmental Protection Agency (EPA); and
3. Oregon Department of Environmental Quality (DEQ); and
4. Oregon Department of Fish and Wildlife (ODFW); and
5. U.S. Bureau of Land Management

G. Disclaimer: This MBI does not in any manner affect statutory authorities and/or responsibilities of the signatory parties.

NOW, THEREFORE, the parties hereto agree as to the following:

## **II. AUTHORITIES**

The establishment, use, operation and maintenance of the Bank is carried out in accordance with the following authorities:

A. Federal:

1. Clean Water Act (33 USC 1251 et seq.);
2. Rivers and Harbors Act (33 USC 403);
3. Fish and Wildlife Coordination Act (16 USC 661 et seq.);
4. Regulatory Programs of the Corps of Engineers (33 CFR Parts 320-330);
5. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR Part 230);
6. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under Clean Water Act, Section 404 (b)(1) Guidelines (February 6, 1990); and
7. Compensatory Mitigation for Losses of Aquatic Resources (33 CFR Part 332)
8. Regulatory Guidance Letter 08-03 - Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment, and/or Enhancement of Aquatic Resources

B. State of Oregon:

1. Oregon Administrative Rules 141-45, 141-85, 141-089, 141-0100 and 141-090. Oregon Revised Statutes ORS 190.110, 196.600-196.990.

**III. ESTABLISHMENT OF THE BANK**

A. Scope of Work: The Sponsor agrees to perform all necessary work, in accordance with the provisions of this MBI, to establish and maintain wetlands and associated buffers, as described in the Exhibit C, Mitigation Plan, until it is demonstrated to the satisfaction of the co-chair agencies, considering the advice of the IRT, that the project complies with all provisions contained herein.

B. Permits: The Sponsor will obtain all appropriate permits or other authorizations needed to construct and maintain the Bank. This MBI does not fulfill or substitute for such authorization(s).

C. Approval: This MBI is effective upon the latter date of signature by the Sponsor and co-chair agencies.

D. Financial Assurance: Because the Sponsor is a government agency, Financial Security Instruments are not required.

E. Real Estate Provisions: The Sponsor shall permanently protect the Bank land by recording a restrictive covenant and/or conservation easement following the DSL template or otherwise approved by the co-chair agencies, a draft of which is attached as Exhibit F, Property Protection Instrument. The Sponsor shall also record an access easement granting to the co-chair agencies the right to access the Bank site for compliance inspections, upon prior notice to the landowner. A copy of the recorded site protection document and access easement shall be provided to the co-chair agencies prior to the initial release of bank credit. A recorded copy of the approved conservation easement, referencing this MBI, shall be provided to the co-chair agencies prior to the final release of credits. All recorded documents shall be sent to:

Oregon Department of Transportation  
ROW-Attention Eddie Burton  
4040 Fairview Industrial Dr. SE MS2  
Salem Or. 97302

The Sponsor agrees to notify the co-chair agencies in writing 60 days prior to taking or allowing any action that would transfer interest in the land or establish any other legal claims over the Bank property. The Sponsor agrees to defend the Bank property from any future liens or easements that the Corps or DSL determine would be incompatible with the mitigation objectives of the Bank.

F. Corps Authorization: The Corps will use the enforcement authority outlined in 33 CFR 326 for enforcing the success of the performance standards as necessary.

G. Reporting: The Sponsor agrees to submit an as-built report to the co-chair agencies within 60 days following completion of the grading and initial seeding and planting of the mitigation Bank. The as-built report shall contain a survey of the finished grades, note the location of all plantings, and indicate the location of installed Best Management Practices. The as-built report also shall describe, in detail, any substantial deviation from the approved Mitigation Plan. Annual monitoring reports shall be submitted by January 31<sup>st</sup> of each year until Bank closure to the co-chair agencies, documenting the management activities, monitoring results, and up-to-date credit ledger, as described in Exhibit C.

#### **IV. OPERATION OF THE BANK**

A. Service Area: The Bank is established to provide mitigation to compensate for impacts to waters of the United States and/or Waters of the State, within the service area depicted on Exhibit E, Service Area Map and Description. This service area shall include all portions of hydrologic unit 17090003, within Linn, Benton, Polk, and Lane Counties. The Bank may be used to compensate for impacts beyond the designated service area, on a case-by-case basis, upon approval by the co-chair agencies.

B. Access: Upon reasonable prior notice, the Sponsor will allow, or otherwise provide for, access to the site by the co-chair agencies, the IRT, or their agents or designees at reasonable times as necessary to conduct inspections and compliance monitoring with respect to the requirements of this MBI. Inspecting parties shall not unreasonably disrupt or disturb activities on the property.

C. Responsible Party: The Sponsor will assume the mitigation responsibility for permittees who purchase (i.e., debit) credits from the Sponsor. The Sponsor will be named as the party responsible for providing such mitigation in the respective permits. This will be formally documented for each transaction in a Credit Receipt, a sample of which is provided in Exhibit G, Sample Credit Receipt. Credits shall only be sold or debited by the Sponsor for public transportation projects.

D. Number of Credits: The number of credits expected to be generated by this Bank is described in Exhibit C, Mitigation Plan, and the ratios and release schedule are described in Exhibit D, Crediting and Debiting Procedure. The actual number of credits will be determined based on the acreage and performance standards achieved. The amount to be debited for each impact is equivalent to the area of wetlands or waters to be impacted, or as specified in each permit issued by the Corps and/or DSL.

E. Performance Standards: Credits will be released based on the achievement of performance standards, as described in Exhibit C, Mitigation Plan.

## **V. MAINTENANCE AND MONITORING OF THE BANK**

A. Maintenance Provisions: The Sponsor agrees to perform all necessary work, at its own expense, to maintain the Bank consistent with Exhibit C, Mitigation Plan. The Sponsor shall continue with such maintenance activities until completion of the monitoring period described in Exhibit C. Deviation from the approved Mitigation Plan is subject to review and written approval by the co-chair agencies.

B. Monitoring Provisions: The Sponsor agrees to perform all necessary work, at its own expense, to monitor the Bank to demonstrate achievement of the performance standards established in Exhibit C, Mitigation Plan (also see Part III.G, Reporting).

C. Accounting Procedure: The Sponsor shall submit a credit receipt to the Corps and DSL each time credits are sold or debited. A sample of this receipt is included as Exhibit G, Sample Credit Receipt. In addition, the Sponsor shall submit a ledger to the co-chair agencies by January 31<sup>st</sup> of each year, per Exhibit H, Sample Credit Ledger. The credit ledger shall document all transactions of the Bank for the previous calendar year, with a cumulative tabulation of all transactions to date. Annual ledgers and credit receipts shall be submitted to the co-chair agencies until the last credit is sold, at which time a final credit ledger shall be submitted.

D. Contingency Plans/Remedial Actions: In the event the Bank, or a specific phase or portion of the Bank, fails to achieve the performance standards specified in the Mitigation Plan (Exhibit C) for two growing seasons, the Sponsor shall develop a remedial action plan before the end of the second calendar year in which the standards were not met. The remedial action plan shall be reviewed and approved in writing by the co-chair agencies prior to being implemented. The remedial action plan shall be implemented according to the schedule included in such plan. In the event the Sponsor fails to submit a plan or to implement the remedial action plan within the time specified in such plan as approved, the Bank may be subject to suspension or revocation of available mitigation credits and/or forfeiture of the financial security instruments, or other enforcement action, as allowed under the regulatory authorities of the co-chair agencies.

E. Default: Should the co-chair agencies determine that the Sponsor is in material default of any provision of this MBI, the co-chair agencies shall notify the Sponsor that the sale or transfer of any credits will be suspended until the claimed deficiencies have been remedied. Upon notice of such suspension, the Sponsor agrees to immediately cease all credit sales

until the co-chair agencies inform the Sponsor that sales or transfers may be resumed. Should the Sponsor remain in default, the co-chair agencies may terminate the MBI and any subsequent Bank operations. Upon termination, the Sponsor agrees to perform and fulfill all obligations under this MBI relating to credits that were sold or transferred prior to termination.

F. Long-Term Management Plan: Prior to Bank closure, and prior to release of the last 25% of the mitigation credits, the Sponsor shall develop a Long-term Management Plan for review and approval by the co-chair agencies, in consultation with the IRT. The Long-Term Management Plan shall include the following five components:

- 1) Identification of long term management needs and annual cost estimates for these needs;
- 2) A long term funding mechanism to meet these needs, such as a non-wasting endowment fund;
- 3) A site protection instrument such as transfer of title or a conservation easement conveyed to an appropriate long-term steward;
- 4) Identification of the party(s) responsible for ownership and all long-term management of the Bank site including a summary of the selected steward's capacity to implement the management plan; and
- 5) Procedures for future amendment of the Long Term Plan to allow for adaptive management, defining situations in which review and approval of regulatory agencies would be necessary.

Implementation of the Long-term Management Plan remains the responsibility of the Sponsor until transfer to a land stewardship entity is approved by the Co-chair agencies. The site protection instrument must prohibit uses that are not compatible with the mitigation objectives, and must include a provision requiring 60-day advance notification to the Co-Chairs before any action is taken to void or modify the site protection instrument, or establish any other legal claims over the Bank site.

G. Bank Closure: At the end of the monitoring period, upon satisfaction of the performance standards, upon the debiting of all credits, and upon approval of a Long-Term Management Plan, the Corps and DSL shall issue a written "Bank closure certification" to the Sponsor. Prior to Bank closure, all elements of the Long-Term Management Plan shall be established or activated such that there are no obstacles to its implementation.

## **VI. RESPONSIBILITIES OF CO-CHAIRS AND THE INTERAGENCY REVIEW TEAM**

A. Participation in Development and Operation: The IRT members will participate, as necessary, to advise the co-chair agencies in ensuring that the development and operation of the Bank meets the compensatory mitigation requirements and policies of their respective agencies.

B. Review and Comment: The IRT members will strive to review and provide comments in accordance with timelines specified by the co-chair agencies, on MBI drafts, mitigation plans, annual monitoring reports, requests for credit release, remediation plans, and the Long-

Term Management Plan for the Bank. In making decisions related to approval and credit release for the Bank, the co-chair agencies shall consider all timely comments.

C. Site Inspections and Recommendations: The co-chair agencies and IRT members will conduct inspections, as necessary, to verify the performance of the Bank. If the Bank is not meeting performance standards, the co-chair agencies, considering the advice of the IRT members, may direct the Sponsor to implement Contingency Plans or Remedial Actions per Section V.D.

D. Document Review: The co-chair agencies shall coordinate as needed to ensure a predictable and timely process for review of documents. Each Co-Chair agency shall strive to respond within 30 days to any written request for action by the Sponsor or the other Co-Chairs.

## **VII. OTHER PROVISIONS**

A. Force Majeure: The Sponsor will not be responsible for Bank failure that is attributed to natural catastrophes such as flood, drought, disease, or regional pest infestation, as determined by the co-chair agencies to be beyond the reasonable control of the Sponsor.

B. Dispute Resolution: Disputes related to the interpretation of this instrument may be referred to independent reviewers for advice, or the parties may participate in non-binding mediation. . The co-chair agencies will evaluate any such input in making final decisions relative to the dispute. Appeals of DSL decisions are governed by ORS 196.800-900 and OAR chapter 141, division 85. The Corps dispute resolution process is outlined in 33 CFR 332.8(e).

C. Termination and Transfer of the MBI: This agreement may be terminated by the Sponsor prior to incurring any mitigation obligations (prior to any credit sales) or if all mitigation obligations are met elsewhere, to the satisfaction of the co-chair agencies. Any transfer or assignment of any portion of or interest in the Bank shall be subject to the requirement that the successor or assignee assume all obligations pursuant to this MBI and have sufficient financial capacity to carry out those obligations. Transfer or assignment of this MBI shall also be subject to the requirement that any funds pledged toward the long-term management fund shall continue to be accrued and expended in a manner consistent and in accordance with this MBI and the Long-Term Management Plan.

If the initiation of construction, which is described in the mitigation plan (Exhibit C) and includes planting of vegetation, has not occurred within three (3) years from the signing of this MBI by the co-chair agencies, this MBI shall be considered terminated, unless the Co-Chairs determine that circumstances warrant an extension. Any extensions must be approved by the co-chair agencies in writing.

D. Specific Language of MBI Shall Be Controlling: To the extent that specific language in this document changes, modifies, or deletes terms and conditions contained in those documents that are incorporated into the MBI by reference, the MBI shall be controlling.

E. Notice: Any notice required or permitted hereunder shall be deemed to have been given either when (i) delivered by hand, or (ii) three (3) days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, or (iii) sent by Federal Express or similar next day nationwide delivery system, addressed as follows (*or addressed in such other manner as the party being notified shall have requested by written notice to the other party*):

Oregon Department of Transportation  
Wetlands Program Coordinator  
Geo-Environmental, Technical Services  
4040 Fairview Industrial Drive SE  
Salem, OR 97302

U.S. Army Corps of Engineers  
CENWP-OD-G Mitigation Program Manager  
P.O. Box 2946  
Portland Oregon 97208-2946

Oregon Department of State Lands  
775 Summer Street NE, Suite 100  
Salem, Oregon 97301-1279

F. Entire MBI: This MBI constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements or undertakings.

G. Modifications: This MBI may only be amended or modified with the written approval of the Sponsor and co-chair agencies. In the event the Sponsor determines that modifications must be made in the Mitigation Plan to ensure successful establishment and operation of the Bank, the Sponsor shall submit a written request for such modification to the co-chair agencies, for approval. The co-chair agencies will distribute this request to the IRT to seek their recommendations.

H. Invalid Provisions: In the event any one or more of the provisions contained in this MBI are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions hereof, and this MBI shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

I. Headings and Captions: Any paragraph heading or captions contained in this MBI shall be for convenience of reference only and shall not affect the construction or interpretation of any provisions of this MBI.

J. Counterparts: This MBI may be executed by the parties in any combination, in one or more counterparts, all of which together shall constitute but one and the same MBI.

K. Binding: This MBI immediately, automatically, and irrevocably binding upon the Sponsor and its heirs, successors, assigns and legal representatives upon signing by the

Sponsor, the Corps, and DSL even though it may not, at that time or in the future, be executed by the other potential parties to this MBI.

L. Liability of Regulatory Agencies: The responsibility for financial success and risk to the investment initiated by the Sponsor rests solely with the Sponsor. The regulatory agencies (Corps, DSL, and any other IRT agencies) that are parties to this MBI administer their respective regulatory programs and make no guarantee of the financial success of mitigation banks, specific individuals, or entities. Accordingly, there is no guarantee of profitability for any individual mitigation bank. The Sponsor should not construe this MBI as a guarantee in any way that the regulatory agencies will ensure sale of credits from this Bank or that the regulatory agencies will forgo other mitigation options that may also serve the public interest. Because the regulatory agencies do not control the number of mitigation banks proposed nor the resulting market impacts upon success or failure of individual banks, market studies of the potential and future demand for bank credits are the sole responsibility of the Sponsor.

M. Grant Program Participation: State and Federal funds designated for voluntary restoration projects shall not be used to generate mitigation credits sold for profit.

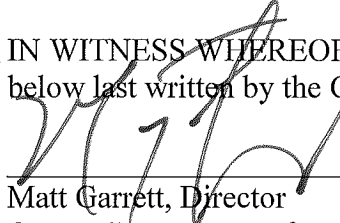
N. Suspension of Credits: The co-chair agencies may suspend the sale of credits upon a determination that information contained in this MBI was falsely represented, that the Bank is not performing in accordance with this MBI, in the event of default of this MBI, or when the co-chair agencies determine that suspension of credits would be in the public interest.

O. Sale of Bank Property or Conveyance of Property Interests: The Sponsor shall not transfer title or otherwise convey interests in the Bank property without 60 day prior notice and written approval by the co-chair agencies. The Sponsor shall notify the receiving party of the site protection instrument and access rights of the co-chair agencies.

P. Non-contractual Instrument: Corps approval of this Instrument constitutes the regulatory approval required for the Greenhill Mitigation Bank to be used to provide compensatory mitigation for Department of the Army permits pursuant to 33 C.F.R. 332.8(a)(1). This Instrument is not a contract between the Sponsor or Property Owner and Corps or any other agency of the federal government. Any dispute arising under this Instrument will not give rise to any claim by the Sponsor or Property Owner for monetary damages. This provision is controlling notwithstanding any other provision or statement in the Instrument to the contrary.

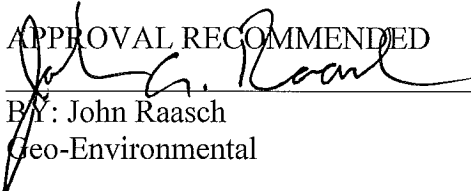
Signature Page to Follow

IN WITNESS WHEREOF, the parties hereto have executed this MBI on the date herein below last written by the Co-Chairs.

  
\_\_\_\_\_  
Matt Garrett, Director  
Oregon Department of Transportation

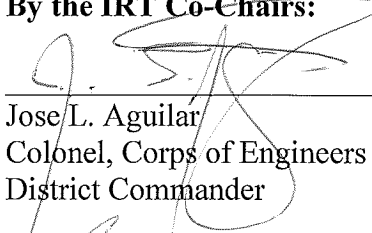
3-4-15  
Date

APPROVAL RECOMMENDED

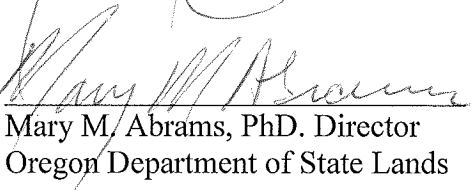
  
\_\_\_\_\_  
By: John Raasch  
Geo-Environmental

3/3/15  
Date

**By the IRT Co-Chairs:**

  
\_\_\_\_\_  
Jose L. Aguilar  
Colonel, Corps of Engineers  
District Commander

13 APR 15  
Date

  
\_\_\_\_\_  
Mary M. Abrams, PhD. Director  
Oregon Department of State Lands

9 March 2015  
Date

**Exhibit "A" Legal Description and Vicinity Map**

**DESCRIPTION**

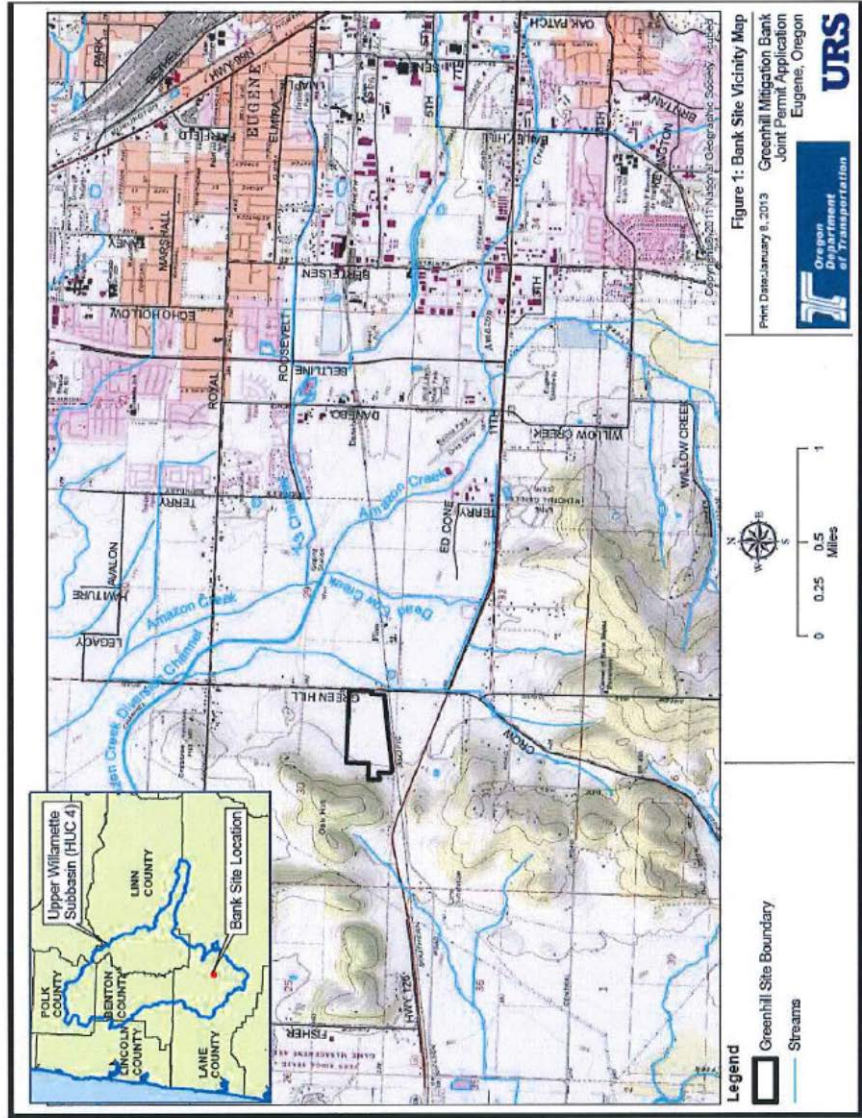
A PARCEL OF LAND LYING IN THE SOUTH HALF OF THE SOUTHEAST ONE QUARTER OF SECTION 30, TOWNSHIP 17 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN, LANE COUNTY, OREGON AND BEING A PORTION OF THAT PROPERTY DESCRIBED AND RECORDED IN THOSE DEEDS TO THE STATE OF OREGON, BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION AND THE STATE OF OREGON, BY AND THROUGH ITS STATE HIGHWAY COMMISSION, RECORDED JULY 16, 1968 ON REEL 400R, INSTRUMENT NO. 31915, DECEMBER 22, 1976 ON REEL 826R, INSTRUMENT NO. 7667767, MARCH 13, 1996 ON REEL 2151R, INSTRUMENT NO. 9616477, AND THAT DEED TO LANE COUNTY, RECORDED AUGUST 17, 1993 ON REEL 1871R, INSTRUMENT NO. 9351848 OF LANE COUNTY OFFICIAL RECORDS; THE SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF GOBLE LANE (COUNTY ROAD NO. 99), SAID POINT BEING 332.54 FEET EAST AND 14.67 FEET NORTH OF THE ONE QUARTER CORNER COMMON TO SECTIONS 30 AND 31, TOWNSHIP 17 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN; THENCE LEAVING SAID NORTHERLY RIGHT OF WAY LINE NORTH 1°42'01" EAST PARALLEL WITH THE NORTH-SOUTH CENTERLINE OF THE SOUTH HALF OF SECTION 30, 358.94 FEET TO THE SOUTHERLY LINE OF PARCEL 1 OF THOSE TRACTS CONVEYED TO THE STATE OF OREGON BY DEED RECORDED JULY 16, 1968 ON REEL 400R, INSTRUMENT NO. 31915; THENCE SOUTH 77°39'59" WEST ALONG SAID SOUTHERLY LINE OF PARCEL 1, 206.13 FEET; THENCE NORTH 1°42'01" EAST PARALLEL WITH THE NORTH-SOUTH CENTERLINE OF THE SOUTH HALF OF SECTION 30, 328.57 FEET; THENCE SOUTH 87°32'19" EAST 467.02 FEET; THENCE NORTH 1°42'01" EAST PARALLEL WITH THE NORTH-SOUTH CENTERLINE OF THE SOUTH HALF OF SECTION 30, 646.62 FEET TO THE NORTH LINE OF THE SOUTH ONE HALF OF THE SOUTHEAST ONE QUARTER OF SECTION 30; THENCE SOUTH 87°32'01" EAST ALONG SAID NORTH LINE, 2034.77 FEET TO THE WESTERLY RIGHT OF WAY LINE OF GREENHILL ROAD (TRAXLER ROAD - COUNTY ROAD NO. 36); THENCE SOUTH 1°56'34" WEST ALONG SAID WESTERLY RIGHT OF WAY LINE, 637.83 FEET TO A POINT ON THE SOUTHERLY LINE OF THE HEREIN REFERRED TO PARCEL 1; THENCE LEAVING SAID WESTERLY RIGHT OF WAY LINE NORTH 70°25'40" WEST ALONG THE SOUTHERLY LINE OF SAID PARCEL 1, 75.26 FEET TO A POINT ON THE WESTERLY LINE OF THAT PARCEL RECORDED AUGUST 17, 1993 ON REEL 1871R, INSTRUMENT NO. 9351848; THENCE ALONG SAID WESTERLY LINE THE FOLLOWING COURSES: SOUTH 13°45'39" WEST 24.92 FEET; SOUTH 6°34'49" WEST

221.45 FEET; SOUTH  $0^{\circ}10'09''$ EAST 134.66 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF THE COOS BAY RAIL LINK (FORMERLY CENTRAL OREGON AND PACIFIC RAILROAD); THENCE SOUTH  $83^{\circ}55'58''$  WEST ALONG SAID NORTHERLY RIGHT OF WAY LINE, 2130.90 FEET TO A POINT ON THE SOUTHERLY LINE OF SECTION 30; THENCE NORTH  $87^{\circ}21'21''$  WEST ALONG SAID SOUTHERLY LINE, 18.99 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF GOBLE LANE; THENCE LEAVING SAID SOUTHERLY LINE NORTH  $26^{\circ}04'02''$  WEST ALONG SAID EASTERLY RIGHT OF WAY LINE, 34.21 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF SAID GOBLE LANE; THENCE NORTH  $87^{\circ}21'21''$  WEST ALONG SAID NORTHERLY RIGHT OF WAY LINE, 61.35 FEET TO THE POINT OF BEGINNING, ALL IN LANE COUNTY, OREGON.

SAID PARCEL CONTAINS 57.55 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE OREGON STATE PLANE COORDINATE SYSTEM – SOUTH ZONE – NAD83 (CORS 96) EPOCH 2002.



**Exhibit B**  
**Preliminary Title Report**



**PRELIMINARY TITLE REPORT**

OBEC ENGINEERING	August 01, 2012
ATTN: WAYNE DONOVAN	Report No: 0276895
920 COUNTRY CLUB ROAD, SUITE 100B	Your No: --
EUGENE, OR 97401	Seller: STATE OF OREGON
EMAIL: WDONOVAN@OBEC.COM	Buyer: TO COME

<u>PRELIMINARY REPORT FOR:</u>	
Owner's Standard Policy	\$T/C
<u>PREMIUMS:</u>	
Owner's Standard Premium	\$T/C
Additional Chain Fee	\$300.00
Temporary Billing	\$300.00

We are prepared to issue 2006 (6/17/06) ALTA title insurance policy(ies) of OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, in the usual form insuring the title to the land described as follows:

( A T T A C H E D )

Vestee:

STATE OF OREGON,  
by and through its DEPARTMENT OF TRANSPORTATION

DATED AS OF: JULY 25, 2012 at 8:00 A.M.

Schedule B of the policy(ies) to be issued will contain the following general and special exceptions unless removed prior to issuance:

**GENERAL EXCEPTIONS (Standard Coverage Policy Exceptions):**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Facts, rights, interests or claims which are not shown by the Public Records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, not shown by the Public Records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.

*No liability is assumed hereunder until policy has been issued and full policy premium has been paid.*

MAIN OFFICE \* 811 WILLAMETTE ST. \* EUGENE, OREGON 97401 \* PH: (541) 687-2233  
FLORENCE \* 1901 HWY 101 - S. 2 \* FLORENCE, OREGON 97439 \* PH: (541) 997-8417  
EUGENE FAX: 485-0307 \* E-MAIL: info@cascadetitle.com \* FLORENCE FAX: 997-8246

Order No. 0276895

Page 2

4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
5. Any lien, or right to a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the Public Records.

SPECIAL EXCEPTIONS:

6. Taxes for the fiscal year 2012-2013, a lien not yet payable.
7. Power Line Easement, including the terms and provisions thereof, granted to Mountain States Power Co. by instrument recorded June 28, 1930, in Book 166, Page 389, Lane County Oregon Deed Records.
8. Access Restrictions, including the terms and provisions thereof, recorded July 16, 1968, Reception No. 31915, Lane County Oregon Deed Records.

NOTE: As disclosed by the tax roll, the premises herein described are not subject to assessment by the following exemption: State Property.

NOTE: Taxes, Account No. 0460962, Assessor's Map No. 17 04 30, #2201, Code 4-15, 2011-2012, EXEMPT - STATE PROPERTY.

Taxes, Account No. 0460970, Assessor's Map No. 17 04 30, #2202, Code 4-15, 2011-2012, EXEMPT - STATE PROPERTY.

Taxes, Account No. 0460988, Assessor's Map No. 17 04 30, #2203, Code 4-15, 2011-2012, EXEMPT - STATE PROPERTY.

NOTE: A judgment search has been made on the above named Vestee(s), and we find NONE except as set forth above.

NOTE: According to the public record, the following deed(s) affecting the property herein described have been recorded within 24 months of the effective date of this report: NONE

NOTE: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the amount, if any, set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.

This report is preliminary to the issuance of a policy of title insurance and shall become null and void unless a policy is issued and the full premium paid.

Cascade Title Co.

jw: Title Officer: TONY SMITH

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PROPERTY DESCRIPTION

PARCEL 1:

A parcel of land lying in the South 1/2 of the Southeast 1/4 of Section 30, Township 17 South, Range 4 West of the Willamette Meridian, Lane County, Oregon; the said parcel being that portion of said South 1/2 of the Southeast 1/4 including in a strip of land variable in width, lying on each side of the center line of the Florence - Eugene Highway as said highway has been relocated, which centerline is described as follows: Beginning at Engineer's center line Station 40+00, said station being 412.11 feet North and 3163.27 feet West of the Southeast corner of said Section 30; thence North 77° 39' 40" East 1859.38 feet; thence on an 11,459.16 foot radius curve left (the long chord of which bears North 75° 38' 35" East) 807.22 feet to Engineer's center station 66+66.60 Back equals 66+68.19 Ahead; thence North 73° 37' 30" East 831.81 feet to Engineer's center line station 75+00.

The widths in feet of the strip of land above referred to are as follows:

Station	to	Station	Width on Northerly Side of Center Line	Width on Southerly Side of Center Line
45+00		58+59.38	134	100
58+59.38		64+50	134	100 in a straight line to 125
64+50		66+00	134	125 in a straight line to 210
66+00		67+50	134	210
67+50		71+50	134	210 taper to 500
71+50		74+00	134	500 taper to 470

EXCEPT THEREFROM the following described tract: Beginning at the Southwest corner of the South 1/2 of the Southeast 1/4 of said Section 30; thence South 89° 14' 10" East along the South line of said South 1/2 of the Southeast 1/4 a distance of 132 feet; thence North 0° 10' 35" West parallel with the West line of said South 1/2 of the Southeast 1/4 a distance of 664.23 feet; thence South 89° 24' 55" East 467.02 feet; thence North 0° 10' 35" West 646.76 feet to the North line of said South 1/2 of the Southeast 1/4; thence North 89° 24' 55" West along said North line 600 feet, more or less, to the West line of said South 1/2 of the Southeast 1/4; thence South along said West line to the point of beginning, in Lane County, Oregon.

Center line bearings are based upon the Oregon Co-ordinate System, South Zone, in Lane County, Oregon.

PARCEL 2:

A parcel of land lying in the South 1/2 of the Southeast 1/4 of Section 30, Township 17 South, Range 4 West, of the Willamette Meridian, Lane County, Oregon; the said parcel being that portion of said South 1/2 of the Southeast 1/4 included in a strip of land 30 feet in width, lying on the Northerly side of the center line of a frontage road, which center line is described as follows: Beginning at Engineer's center line Station "FR" 55+00, at which station the westerly line of said of land lies at right angles to said center line, said Station being 834.25 feet North and 1720.14 feet West of the Southeast corner of said Section 30; thence North 77° 39' 40" East 86.00 feet; thence on a 5729.58 foot radius curve left (the long chord of which bears North 74° 24' 35" East) 650.28 feet; thence North 71° 09' 30" East 158.00 feet;

Continued-

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Property Description Continued (Parcel 2)-

thence on a spiral curve left (the long chord of which bears North 68° 45' 30" East) 240 feet; thence on a 954.93 foot radius curve left (the long chord of which bears North 59° 52' 48" East) 135.95 feet; thence on a spiral curve left (the long chord of which bears North 51° 00' 06" East) 240 feet; thence North 48° 36' 06" East 244.84 feet to Engineer's center line Station "FR" 72+55.07, in Lane County, Oregon.

ALSO that portion of said South 1/2 of the Southeast 1/4 lying Southeasterly of said center line and Northerly of Parcel 1, in Lane County, Oregon.

Bearings as based upon the Oregon Co-ordinates System, South Zone, in Lane County, Oregon.

PARCEL 3:

A parcel of land lying in the Southeast 1/4 of the Southeast 1/4 of Section 30, Township 17 South, Range 4 West of the Willamette Meridian, Lane County, Oregon; the said parcel being that portion of said Southeast 1/4 of the Southeast 1/4 lying Southerly of Parcel 1; Northerly of the S.P. Co. right of way and included in a strip of land 70 feet in width, lying on the Westerly side of the center line of Green Hill Drive (County Road No. 36) as said county road has been relocated, which center line is described as follows: Beginning at Engineer's center line Station "GH" 9+47.35, which station is coincident with Station 73+06.47 on the center line of the relocated Florence - Eugene Highway, said station being 1189.51 feet North and 47.39 feet East of the Southeast corner of said Section 30; thence South 1° 51' 30" West 923.65 feet to Engineer's center line Station "GH" 18+71, in Lane County, Oregon.

Bearings are based upon the Oregon Co-ordinate System, South Zone, in Lane County, Oregon.

PARCEL 4:

That part of the following described tract which lies Northerly of the tracts conveyed to the State of Oregon, State Highway Commission, by deed recorded July 16, 1968, Reception No. 31915, Lane County Oregon Deed Records, to-wit: Beginning at a point on the Section line between Sections 30 and 31, Township 17 South, Range 4 West of the Willamette Meridian, said point being South 89° 14' 10" East, 132.00 feet from the one-quarter corner between said Sections; thence North 0° 10' 35" West parallel with the North and South one-quarter line through Section 30, 664.23 feet; thence South 89° 24' 55" East, 467.02 feet; thence North 0° 10' 35" West, 646.76 feet to the North line of the South one-half of the Southeast one-quarter of said Section; thence South 89° 24' 55" East following said line 2034.57 feet to a point 30.00 feet from the East line of said Section 30; thence parallel and 30.00 feet distant from said section line South 0° 04' 10" West, 982.29 feet to the North margin of the Southern Pacific Railroad right of way; thence following said margin South 82° 03' West, 2220.53 feet to the section line between Sections 30 and 31; thence following said section line North 89° 14' 10" West, 297.05 feet to the point of beginning, reserving a 20 foot roadway easement over the most Westerly side of the above described property, all in Lane County, Oregon.

Continued-

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Property Description Continued-

PARCEL 5:

A parcel of land lying in the Southeast 1/4 Southeast 1/4 of Section 30, Township 17 South, Range 4 West, Willamette Meridian, Lane County, Oregon and being a portion of that property described in that deed to Triple H. Investments, recorded on Reel 706R, Reception No. 7438098, Lane County Official Records; the said parcel being that portion of said property lying Southerly of a line at right angles to the center line of relocated Greenhill Road at Engineer's Station "GR" 23+50 and included in a strip of land variable in width, lying on the Westerly side of said center line which is described as follows: Beginning at Engineer's center line Station "GR" 7+50, said station being 708.66 feet South and 45.25 feet West of the Northeast corner of Section 31, Township 17 South, Range 4 West, Willamette Meridian; thence North 1° 38' 11" East 1175 feet; thence on a 2864.79 foot radius curve right (the long chord of which bears North 3° 46' 41" East 214.12 feet) 214.17 feet; thence North 5° 55' 11" East 210.83 feet to Engineer's center line Section "GR" 23+50, in Lane County, Oregon.

The widths in feet of the strip of land above referred to are as follows:

Station	to	Station	Width on the Westerly Side of Center Line
"GR" 17+00		"GR" 19+25	65
"GR" 19+25		"GR" 23+50	65 in a straight line to 60

EXCEPT therefrom that property described in that deed to the State of Oregon, by and through its State Highway Commission, recorded on Reel 400R, Reception No. 31915, Lane County Official Records, in Lane County, Oregon.

PARCEL 6:

A parcel of land lying in the South 1/2 Southeast 1/4 of Section 30, Township 17 South, Range 4 West, Willamette Meridian, Lane County, Oregon and being a portion of that property described in that deed to Triple H. Investments, recorded on Reel 706R, Reception No. 7438098, Lane County Official Records; the said parcel being that portion of said property lying Southerly of that property described in that deed to the State of Oregon, by and through its State Highway Commission, recorded on Reel 400R, Reception No. 31915, Lane County Official Records, in Lane County, Oregon.

EXCEPT: A parcel of land lying in the Southeast 1/4 Southeast 1/4 of Section 30, Township 17 South, Range 4 West, Willamette Meridian, Lane County, Oregon and being a portion of that property described in that deed to Triple H. Investments, recorded on Reel 706R, Reception No. 7438098, Lane County Official Records; the said parcel being that portion of said property lying Southerly of a line at right angles to the center line of relocated Greenhill Road at Engineer's Station "GR" 23+50 and included in a strip of land variable in width, lying on the Westerly side of said center line which is described as follows: Beginning at Engineer's center line Station "GR" 7+50, said station being 708.66 feet South and 45.25 feet West of the Northeast corner of Section 31, Township 17 South, Range 4 West, Willamette Meridian; thence North 1° 38' 11" East 1175 feet; thence on a 2864.79 foot radius curve right (the long chord of which bears North 3° 46' 41" East 214.12 feet) 214.17 feet; thence North 5° 55' 11" East 210.83 feet to Engineer's center line Section "GR" 23+50, in Lane County, Oregon.

Continued-

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Property Description Continued (Parcel 6)-

The widths in feet of the strip of land above referred to are as follows:

Station	to	Station	Width on the Westerly Side of Center Line
"GR" 17+00		"GR" 19+25	65
"GR" 19+25		"GR" 23+50	65 in a straight line to 60

EXCEPT therefrom that property described in that deed to the State of Oregon, by and through its State Highway Commission, recorded on Reel 400R, Reception No. 31925, Lane County Official Records, in Lane County, Oregon.

ALSO EXCEPT therefrom that property in that deed to the Trust of Timothy O'Reilly, recorded on Reel 1365R, Reception No. 8531599, Lane County Official Records, in Lane County, Oregon.

**Exhibit C  
Compensatory Mitigation Plan**

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Appendix C:	Plan Set

### i. Compensatory Mitigation Plan Summary

<b>Table i. Data Summary</b>	
<b>Project Name:</b>	<b>Greenhill Mitigation Bank</b>
<b>Type of Bank:</b>	Single client
<b>ODOT Staff Contact Info:</b>	Brad Livingston, 503-986-3062, cell: 503-480-9367, email: <a href="mailto:bradley.f.livingston@odot.state.or.us">bradley.f.livingston@odot.state.or.us</a>
<b>ODOT Key #:</b>	17561
<b>Tax Lots:</b>	T17S-R4W-S30 TL 2201, 2202, 2203
<b>Size of Site:</b>	57.55 acres
<b>Latitude/Longitude:</b>	N 44.0579, W-123.2128
<b>City:</b>	Eugene
<b>County:</b>	Lane
<b>Driving Directions:</b>	From downtown Eugene take West 11 <sup>th</sup> Ave (Oregon State Highway 126) west, toward Veneta. Turn right on Green Hill Road. Site is immediately north of the Southern Pacific Railroad line on the west side of Green Hill Rd.
<b>Land Use(s):</b>	Zoned Agricultural
<b>Ecoregion:</b>	Willamette Valley (WV)
<b>ODFW Conservation Strategy:</b>	Conservation Opportunity Area WV-23
<b>Watershed Hydrologic Unit Code (HUC):</b>	Amazon Creek, Upper Willamette trib., HUC # 170900030107
<b>USGS Quadrangle:</b>	Eugene West
<b>Elevation:</b>	420 feet
<b>NRCS Mapped Soil Type:</b>	Dayton, Pengra
<b>Critical Habitat:</b>	Adjacent to critical habitat for Willamette Valley daisy ( <i>Erigeron decumbens</i> ) and Kincaid's lupine ( <i>Lupinus sulphureus</i> subsp <i>kincaidii</i> )
<b>Pre-project Wetland Types (Cowardin Classification &amp; Size):</b>	Palustrine, emergent, PEME (57.35 acres)
<b>Wetland/Riparian Hydrogeomorphic (HGM) Subclasses of Oregon:</b>	Flats and Slopes
<b>Corps Waterway Category:</b>	Category 7 (wetlands)
<b>Service Area:</b>	Upper Willamette 4 <sup>th</sup> field HUC# 17090003

## 1.0 Introduction

The Greenhill Mitigation Bank is located on the western boundary of the city of Eugene, immediately adjacent to the Urban Growth Boundary, Green Hill Road (Figure 1). The Bank site is situated within the Eugene West United States Geological Survey Quadrangle at the following location:

Township 17 South, Range 4 West, Section 30  
Latitude: 44.0579; Longitude: -123.2128

The Greenhill property is comprised of three tax lots owned by the Oregon Department of Transportation (ODOT) and is zoned for agricultural use; Lane County land-use approval has already been granted for the proposed wetlands compensatory mitigation (CM) use. The Bank is located within the Willamette Valley Ecoregion, an area characterized by fertile soils and mild climate. Historically, the region had extensive cover of prairie, but native habitats were widely diminished as the valley was converted to agricultural land use. Wetlands on the Bank property are an example of this agricultural conversion which took place prior to the earliest historic aerial photo from 1936. Wetlands on-site are characterized as palustrine emergent wetlands by the Cowardin classification system, and are a combination of slope/flats under the Hydrogeomorphic classification system. Returning native wet prairie to the site is a focus of the Bank project.

The Greenhill Mitigation Bank will be used to mitigate for unavoidable wetland impacts from transportation projects. The Bank will make wetland mitigation credits available for project impacts within the Upper Willamette 4<sup>th</sup> field HUC (see Exhibit E: Service Area Map and Description). Numerous construction and maintenance projects within the region will require mitigation for wetland impacts. The Bank provides a feasible way to compensate for the unavoidable impacts to natural resources. The Bank will be a single user bank used for transportation projects only. An assessment of past, present and reasonably foreseeable future ODOT projects within the proposed service area suggests ODOT would benefit from having wetland credits available over the long term. Within the past decade ODOT has established approximately 19 CM sites in the southern Willamette Valley, 10 of which within the Upper Willamette Basin. Of the 19 or so CM projects, at least 3 required remedial work after the construction project contract closed thus requiring additional expenditure of funds for corrective action plans. Local projects such as the “OR 126 Eugene to Veneta Spot Improvements” and an adjoining Rail crossing Improvement project are planning to use the Bank for some or all of their needs.

This CM Plan defines the rehabilitation methods and ecological site goals for the Bank. The CM plan outlines the adaptive and long-term management processes, as well as the methods and requirements for monitoring, maintenance, and reporting. Specific Bank goals and objectives are discussed in the following section.

## **2.0 Bank Goals and Objectives**

Goals of the Bank are to enhance/re-habilitate 57.35 acres and restore 0.2 acres, resulting in the establishment of 57.55 acres of Hydrogeomorphic (HGM) class slope/flat native wetland prairie. For the Cowardin system, the dominant wetland type is classified as Palustrine Emergent. The 0.2 acre restoration area is observable on the Wetland Delineation Map (Figure 2). Accomplishment of this goal will result in the increased coverage of native wetland prairie habitat within the Upper Willamette watershed, a result which is consistent with the goals and efforts of several restoration organizations within the area, including the Rivers to Ridges Partnership, City of Eugene, The Nature Conservancy, and the U.S. Bureau of Land Management (BLM). Principal Bank objectives common to all organizations include providing local replacement for important locally rare functions and values lost from wetland impact sites, and enhancing a wetland prairie area that will be self-sustaining to minimize long-term maintenance needs. The goals and objectives for the Bank coincide with the objectives outlined in both the Oregon Conservation Strategy and the West Eugene Wetlands Plan.

The Sponsor proposes three objectives:

1. Rehabilitate (enhance) wetland hydrogeomorphology and associated characteristic native biota.
2. Support long-term sustainable management of the Bank.
3. Contribute to recovery of sensitive species.

Improvements made at the Bank will serve to improve function relative to the baseline in numerous individual wetland functions important to the area, most notably the terrestrial support group and fish support group. Water storage and delay, aquatic invertebrate habitat, waterfowl feeding habitat, native plant diversity, and songbird and mammal habitat are targeted for improvement. Function weighted crediting is proposed utilizing the Oregon Wetland Assessment Protocol V2.0 maintained by DSL. The area surrounding Greenhill will benefit significantly from the site's improvements in native plant diversity given its proximity to critical habitat for several species listed in the Oregon Department of Fish and Wildlife's (ODFW) Oregon Conservation Strategy (2006). Enhancement and protection of this site will further the goals of recovery for degraded wet prairies within the Willamette Valley Ecoregion.

## **3.0 Site Selection**

### *3.1 Site Selection Overview*

ODOT's Greenhill Bank is appropriately suited to serve as a wetland mitigation bank due to its location contiguous to other active wetland restoration efforts within the West Eugene Wetlands (Figure 3), as well as its potential to successfully replace lost functions within the watershed and ecoregion. Adjoining land uses are compatible and no known contaminants have been identified in a Phase 1 Environmental Site Assessment. Native wet prairie and slope wetlands have been lost throughout the ecoregion due to conversion

of land to agricultural and urban development; the Greenhill Bank soil type Dayton is ideal for wet prairie restoration.

Many of ODOT's projected wetland impacts within the Bank's service area will occur on flat, low-lying areas with Palustrine emergent wetlands bordered by roadside ditches. This is the most commonly degraded type of wetland in the watershed, and Greenhill can provide replacement for the functions and services associated with this wetland class. Therefore, the enhancement of slope/flats emergent wetlands would serve to compensate for losses within the Willamette Valley due to ODOT construction and maintenance projects. This roadside wetland type characteristically provides the ecological functions of seasonal water storage and stabilization of sediment and nutrients; characteristic plant species diversity is typically degraded. Because ODOT provides improved stormwater management facilities on-site in the form of bioswales, for example, the improved habitat functions provided at Greenhill will compliment the water quantity and quality improvements at project sites.

### 3.2 *Species of Concern*

Greenhill is located within a designated Conservation Opportunity Area (WV-23) as determined by the ODFW. This conservation area contains some of the largest remaining fragments of Willamette Valley native wet prairie, which provides important habitat for migratory birds. The Fern Ridge Wildlife Area, located less than 2 miles west of the Greenhill site, provides lake and marshland habitat for numerous species of migratory waterfowl, including Dusky Canada Goose, Northern Pintail, Great Egret, Ring-billed Gull and Black-bellied Plover. Fern Ridge Reservoir is listed as an Important Bird Area by the Audubon Society of Portland, and it is an integral part of the larger migratory bird corridor known as the Pacific Flyway.

Additionally, there are several known populations of endemic and listed endangered and threatened plant species within this conservation area: Willamette Valley daisy (*Erigeron decumbens* var *decumbens*), Kincaid's lupine (*Lupinus sulphureus* subsp. *kincaidii*), and Bradshaw's desert parsley (*Lomatium bradshawii*). Kincaid's lupine is the larval host for the listed endangered Fender's Blue Butterfly (*Icaricia icaroides fenderi*). Immediately adjacent to the Greenhill site is an active wet prairie restoration project overseen by the BLM. The U.S. Fish & Wildlife Service (USFWS) has identified critical habitat for both Willamette Valley daisy and Kincaid's lupine on the BLM site.

Streaked horned lark (STHL) is a federally listed "Threatened" species that has been observed on various sites throughout the west Eugene Wetlands. The Bank site will accommodate STHL habitat primarily in and around the vernal pools and throughout the Bank as site preparation and vegetation management occurs. Site preparation and invasive species treatments will fall under the 4(d) exemption for STHL, and planting and seeding will be conducted outside the nesting window; in the event planting will be conducted in spring a 300 foot buffer will be provided from active STHL nests.

### 3.3 *Connectivity*

The property upon which the Bank will be developed is incorporated in several regional conservation and recreation plans established by local entities. The City of Eugene's West Eugene Wetlands (WEW) Plan was originally adopted in 1992 by the City of Eugene and Lane County and in 1994 by the DSL and the Corps with the intention of protecting and restoring native wetlands within the city of Eugene and the surrounding area. In this plan, the Greenhill wetland site was identified as an area of wetland rehabilitation. Enhancement of habitat at the Greenhill site furthers the objectives set forth in the WEW Plan by increasing the total acreage of the wetland complex protected within the West Eugene area and providing another linkage in the network of protected and restored wetlands managed by partners. The Rivers to Ridges Partnership, formerly the West Eugene Wetlands Partnership, has also created a vision map highlighting open areas in and around Eugene that can serve as protected public space. The Partnership identifies the Greenhill property as a significant wetland area.

The enhancement and protection of the Greenhill wetlands will augment the conservation efforts currently being implemented by local conservation agencies, and the continued preservation of the property serves as an integral piece in creating a greater degree of habitat connectivity. The connectivity of native wet prairie habitat will create corridors for expansion and migration of plant and animal species native to Willamette Valley wet prairies. The contiguous arrangement of wetland restoration and enhancement sites supports the expansion of critical habitat for rare species, and an increase in habitat quality for invertebrates, amphibians, birds such as the STHL and mammals of conservation concern.

## **4.0 Existing Conditions**

### 4.1 *Existing Conditions Overview*

Palustrine emergent wetlands occupy approximately 57.35 acres within ODOT's property boundaries. A single upland mound, occupying 0.2 acres, is situated within the larger continuous wetland landscape (see Delineation Report). Two hydric soil series are mapped within the site boundaries: Dayton silty clay loam and Pengra silt loam.

### 4.2 *Delineated Wetlands*

A delineation of the wetlands onsite was conducted in the summer of 2011 and received a concurrence from the Department of State Lands on December 5, 2011 (WD #2011-0346). The site can be described as slope/flats wetlands under the Hydrogeomorphic classification system. Soils throughout the site exhibited characteristics of hydric properties, specifically the presence of redoximorphic features within the upper twelve inches. The presence of a clay hardpan underlying the upper soil layers creates a shallow perched water table, allowing water to remain close to the surface for an extended portion of the year.

The Bank reached its current state of degradation following systematic leveling, grading, and ditching that was used to convert the prairie to agricultural land. The agricultural practices drained the site and disturbed the top layers of soil. Pasture grasses and other

non-native plant species were introduced to the site during periods of agricultural production and subsequently by laying fallow. The unmanaged fallow state of the Bank site enabled non-native species to colonize.

#### 4.3 Hydrology

On-site hydrology is maintained through seasonal precipitation and surface water run-off. There is a spring that contributes hydrology in the northwest area of the Bank. The spring provides prolonged hydrologic inputs via lateral subsurface seepage into mid-summer. The site is typically saturated throughout the winter and dries out by early summer. Surface water is mostly confined to drainage ditches which transport water from west to east, then to the northern property boundary by way of a N-S drainage swale. This swale feeds into a second major drainage feature that transports water eastward towards Green Hill Road. Site-wide systematic drainage associated with past agricultural uses predate the earliest aerial photo from 1936. LIDAR imagery for the site reveals the numerous agricultural alterations. Figure 4 details the altered surface hydrology drainage pattern based on LIDAR analysis and field observations. Drainage ditches vary from a few inches deep on the upper slope, to over 18” at the primary drainage ditch outlet. The west half of the site is becoming invaded by upland invasive species due to drainage on the slope wetlands. The photo below depicts the primary drainage ditch outlet during winter and the staked northern ODOT property boundary; to the right (north) is the BLM site.



*Photo depicting primary outlet ditch*

#### 4.4 Vegetation

The site is currently dominated by non-native pasture grasses and forbs. While there are several stands of native tufted hairgrass (*Deschampsia caespitosa*), the vegetative cover consists primarily of non-native and invasive plant species including substantial populations of velvet grass (*Holcus lanatus*), pennyroyal (*Mentha pulegium*), parentucellia (*Parentucellia viscosa*), and colonial bentgrass (*Agrostis tenuis*). The abundance of non-native plants presents the issue of direct competition with native characteristic wetland graminoids and forbs. In recent years, the site has laid fallow, allowing for incursion by invasive species such as reed canary grass (*Phalaris arundinacea*), Armenian blackberry (*Rubus armeniacus*), and Scotch broom (*Cytisus scoparius*). A narrow strip of mixed woodland (e.g. *Fraxinus latifolia*, *Amelanchier alternifolia*) is found on the southern and eastern boundaries, and scattered trees and shrubs, including California black oak (*Quercus kelloggii*), are present along the northwest fence lines. A large ash tree and many saplings are located near the center of the site.

Rare plant surveys were conducted by Diane Steeck, Wetland Ecologist with the City of Eugene, Parks and Open Space Division, Natural Resources Section (2012). Ms. Steeck has an M.S. in Ecology and over 20 years of experience conducting vegetation monitoring, surveys, and assessments. She worked for the USFWS for 11 years on recovery of threatened and endangered plants and animals, and has worked with listed Willamette Valley prairie species for the past 5 years. No listed or candidate plant species were found on the Property. The Property supports at least 55 nonnative vascular plant species and 57 native vascular plant species. However for most of the native species, only a few small groupings or single individuals were found. Concentrations of native plants that could be conserved include a Camas population in the far northeast corner of the site along BLM property. A drainage swale also occurs in this area and has a relatively high density of native vernal pool species, such as Willamette Valley bittercress (*Cardamine penduliflora*), plantainleaf buttercup (*Ranunculus alismaefolius*), coyote thistle (*Eryngium petiolatum*) and popcornflower (*Plagiobothrys figuratus*), although nonnative invasive pennyroyal (*Mentha pulegium*) is also abundant. Timwort (*Cicendia quadrangularis*) was not found on the Property during 2012 surveys, but was present during WEP surveys in 2003 (Walker 2003). This short statured species occupies openings and areas of relatively bare soil in wetland prairie plant communities and therefore may exist in the soil seed bank and be observed above ground following soil disturbance or removal of vegetation. It should be considered to still occur on the Bank. A complete plant list for the Bank is provided in Appendix A.

#### 4.5 Surrounding Land Uses

Adjacent conservation projects (BLM's Greenhill property and Meadowlark Prairie) are paramount examples of native wet prairie. Enhancement efforts at ODOT's Greenhill site are intended to fit into this native restored landscape. The BLM property to the north contains both PEM and PFO wetlands and several rare species. To the south, the Southern Pacific Railroad contains forested wetlands contained in a broad railroad ditch, and south of the railroad are extensive wet meadows. Southeast of the Bank is a small parcel of County right of way that will be maintained as a buffer in collaboration with the

county. Across Greenhill Road to the east are extensive west Eugene Wetlands. Immediately west of the site is Oak Hill, a high quality forested upland, and further west is Fern Ridge Reservoir and adjoining managed wet prairie. A former utility easement on the Bank will be vacated.

The Sponsor is responsible for managing threats to the Bank when they arise. The greatest ecological stressor in terms of wildlife mobility or contaminants is the presence of Greenhill Road and the railroad. Greenhill Road does not convey a high traffic volume and speed is reduced because of the stop sign at the railroad crossing. Trash and debris from drivers will mostly be captured with the Greenhill Road right of way and ditch, such trash and debris will be removed regularly. No trails are proposed on the Bank. Rural residential sites are located to the west and may be a cause of some ecological stress if chemicals are used to manage yards, septic tanks aren't maintained or if humans enter the site. Any chemical use or septic tank leaks impacting the Bank will be addressed by reporting to the appropriate authorities. Signs may be posted if trespass issues occur and communication with neighbors regarding goals and activities at the site will take place routinely. An approximate 15 foot wide native grass buffer will be established and maintained by mowing to reinforce Bank management boundaries (Plan Sheet GN-3). The railroad speed is slow which reduces concern for accidents, but in the event of a spill from the railroad the railroad ditch would likely receive any surface contaminants. The rail operator would be liable for any damages; however, this threat is further mitigated by the proposed Rail Safety project installing a cross-drain culvert beneath Greenhill Road to convey surface water, any contaminants and reed canary grass seed to the ditch conveyance on the east side of Greenhill Road. The Rail project will also include Stormwater Management Plans. Strategic shallow swales and small berms may be located to capture or minimize invasive species from encroaching and to ease management along the periphery of the site; these features will be described in the as-built report once site preparation is complete and initial planting takes place. Invasive species treatments will be applied based on plant phenology, in order to effectively treat individual species. The City of Eugene will be managing the site over the next several years on behalf of the Sponsor. The City has extensive capability at effectively managing wet prairie habitats.

## 5.0 Functions and Values Assessment

A functional assessment was conducted using the methodology prescribed by the Oregon Rapid Wetland Assessment Protocol (ORWAP) (Adamus et al, 2010) to identify the functions provided by the wetlands prior to any enhancement activity. The ORWAP assessment was conducted by the Sponsor and the IRT co-chairs, and then further refined by Ms. Dana Hicks, Mitigation Specialist at DSL. Data sheets and summary data are available in Appendix B. A summary of the assessment is provided below.

**Hydrologic Function:** This grouped score is represented by the individual function of Water Storage and Delay. In its pre-enhancement state, the wetlands have a low capability of storing water due to the agricultural drainage ditches that transport surface water off-site. Functional lift is not indicated by ORWAP, however the best professional judgment of the Sponsor is that functional improvement will be attained through the

systematic filling of drainage swales, disruption of small linear drainage features, re-contouring and creation of vernal pools.

**Water Quality Group:** The water quality score represents the individual functions of Sediment Retention, Phosphorous Retention and Nitrate Removal and Retention. The high score assigned to the pre-enhancement site can be largely attributed to the flat gradient of the land and the high degree of herbaceous coverage. The function score indicates a slight decrease after enhancement.

**Fish Support Group:** The Greenhill site does not provide much habitat to fish species given the lack of accessibility; however the function score is expected to increase significantly due to the anticipated improvements in habitat and the increased persistence of surface water. The Bank site would only provide direct fish habitat for non-anadromous resident species during flood events; however, the pre and post scores represent the second highest ecological lift.

**Aquatic Support Group:** This grouped score is represented by five individual functions. The score for pre-enhancement conditions is fairly high due to the site's hummocky microtopography, the proximity to other wetland areas, and the density of ground cover. The function assessment score predicts a slight decrease in function. Hummocks will return quickly as the roughened soil surface and hydric soils undergo weathering. The addition of downed wood will also provide basking sites and cover for amphibian and reptile species. Snags will increase vertical woody composition, and other large wood will add habitat features along the edges of vernal pools. American sloughgrass planted in the seasonally inundated planting areas will improve foraging for waterbirds.

**Terrestrial Support Group:** The pre-enhancement score for this grouped function is represented by three individual functions. The score reflects the density and diversity of herbaceous cover, the greater proportional extent of natural land cover in surrounding areas, and the hummocky microtopography present at the Greenhill site. Following enhancement activities, this score will most likely be represented by the individual function of Native Plant Diversity. The score will reflect the increase in native wet prairie and vernal pool plant species coverage, the representation of uncommon wetland species, and a decrease in cover of invasive plants within the wetland. Rare wildlife habitat will also be supported for songbirds, grassland birds, raptors, and mammals of conservation concern. This grouped function shows the greatest ecological lift according to the functional assessment.

**Carbon Sequestration, Public Use and Recognition, and Provisioning Services:** The pre-enhancement score is reflective of the drained condition of the site. The post-enhancement score suggests reduced carbon sequestration due to prolonged inundation. Public use will be approved educational and research opportunities as the site will be managed as a preserve and harvest of feed or wood products will not occur. Tribal members may be allowed to collect native materials on-site once the performance standards are achieved.

In summary, the ORWAP scores will be improved based on the conservation investment in wetlands of conservation concern including native wet prairie and vernal pools. An increase of seasonal water extent and area influenced by inundation fluctuation ranges of 12" +/- will provide improved habitat for target species. The increased flow-through complexity, use of large woody debris, and diverse rigid vegetation will regulate flow rates at high water. Vegetative improvements will be realized through a reduction of invasive species, as well as a conversion to a native dominated herbaceous stratum throughout. Table 1 provides the summary scores for the grouped functions as well as the predicted scores for the post-enhancement conditions.

**Table 1. Summary of ORWAP Function Scores**

<b>Grouped Function</b>	<b>Pre-enhancement Score</b>	<b>Post-enhancement Score</b>	<b>Estimated Change</b>
<b>Hydrologic Function</b>	2.92	2.92	0
<b>Water Quality Group</b>	8.64	8.36	-0.28
<b>Fish Support Group</b>	2.09	3.92	+1.83
<b>Aquatic Support Group</b>	5.91	5.84	-0.07
<b>Terrestrial Support Group</b>	6.14	8.87	+2.73
<b>Carbon Sequestration</b>	2.95	2.91	-0.04
<i>Average</i>	4.77	5.47	
<i>Public Use &amp; Recognition</i>	10.00	10.00	
<i>Provisioning Services</i>	0.00	0.00	

Value scores are unchanged because the site is an enhancement, and according to the ORWAP guidance (2010), the off-site contributing area and downslope landscape factors are what dictate a wetland’s value. In the future however, if listed threatened or endangered species are introduced to the site, the value score would increase under ORWAP.

The Sponsor would like to note that despite the low lift in overall function scores the target suite of locally important functions, biodiversity and habitat support, are significant. Further, ODOT roadside wetland impacts are expected to have low functionality.

## **6.0 Mitigation Work Plan**

The mitigation concept is native wet prairie and vernal pool establishment. The design addresses Bank goals by eliminating linear drainage features and creating topographic features that support vernal pools and indirect surface flow paths. These features will produce hydroperiods necessary to support the target habitats. Surface water will be collected in vernal pools. At high water events surface water will spill out of pools and move northeasterly, following the natural landscape. Hydrology will be closely observed to ensure avoidance of adverse effects to rare species on the adjoining BLM parcel to the north. The BLM supports the project and their feedback is incorporated herein. Unintended impacts to rare species will be rectified by the Sponsor. Adaptive management during the site preparation phase will be conducted to ensure hydrology of

the adjoining BLM site is not adversely affected and, if needed, re-grading will take place.

Access is via the County portion of Goble Lane as well as off Greenhill Road. An access driveway will be established off Greenhill Road permanently. A locked gate will be maintained at the Greenhill Rd. access. No fences will be removed or maintained. Bank boundaries will be monumented with carsonite posts. The former power lines and poles on-site are removed.

Site preparation will be conducted prior to grading, following grading and prior to planting. Site preparation after grading will continue invasive species treatments and field fit grading over multiple years. Erosion control will be adaptively managed; compost berms, coir logs, matting and cobble will be used. Invasive species will be controlled by chemical, mechanical, physical and solarization means throughout the life of the project. Solarization is the act of removing sunlight from plants using plastic sheeting, geotextile, or other means. The hydrologic effects of drainage ditches will be undone by the implementation of the grading plans. Drainage ditches will be tilled and filled, and re-contouring will ensure water is retained on-site in vernal pools. Vernal pools will have a maximum slope of 10:1. Vernal pools are designed to inundate with approximately 12" +/- of standing water. Grading will be refined as needed to target appropriate hydrology during the multi-year site preparation phase.

Detailed planting plans will establish a "quilt" of various planting zones comprised of complex native wetland prairie communities. Four forb mixes will be sown with varying distribution throughout the Bank to establish diversity. Seed mixes will be tailored to native wet prairie grass mix, vernal pools, native grass buffer, and native forb mixes; exact seed mixes will be dependent on availability of the locally acquired plant stock. Two snags will provide vertical habitat structure and nesting opportunities for cavity nesters; due to the Bank size and the landscape "openness" the snags are not intended to deter STHL use, rather they are intended to mimic natural conditions. Please refer to the Plans Cover sheet describing sequencing of the mitigation work plan, as well as grading and planting plan sheets for specific construction design information (see Plan Set Appendix C)

## **7.0 Determination of Credits**

The Sponsor, in collaboration with the IRT, agreed to credit ratios derived from function-weighted credit accounting based on the Willamette Partnership (<http://willamettepartnership.org>) protocol, without the reserve pool multiplier due to low risk of failure. The difference in the pre (276.9) and post (317.2) function-weighted scores is 40 functional credits (See ORWAP comparison, Appendix B). Assuming medium function impact sites with an average score of 0.5, and dividing the total function weighted credits generated by the assigned value of 5 for Medium function impact sites yields the total potential credits assuming the entire Bank is used for medium function impacts, thus resulting in an effective ratio of 7.25:1.

The Bank site is in a priority area and has a high value score, so no discount factor would apply to the credits. The IRT also agreed to allow a default ratio of 7.25:1 (reflecting medium function impact sites) for all projects impacting 0.2 acres or less, and the Sponsor proposes using the 7.25:1 ratio for determining credit generation in all enhanced/rehabilitated wetlands to keep accounting simple. Please note that the driveway may not effectively convert the wetland to upland, thus this area will be evaluated during the year 5 “delineation light”, and if the area is upland the appropriate debit will be accounted for (estimated less than 0.10 acre). Below are the resulting credit generation calculations:

**Table 2: Credit Generation**

Cowardin Class	HGM Class	Acres	Ratio	Total Credits
PEM	Slope/Flats	57.35	7.25:1	7.91
PEM	Slope/Flats	0.2	1:1	0.2
TOTAL		57.55		8.11

## 8.0 Performance Standards

The DSL routine performance standards for herbaceous wetlands have been used as guidance for the Performance Standards that will be applied at the Greenhill Bank site. Currently, there is extensive cover of pennyroyal (*Mentha pulegium*), a non-native forb that is difficult to eradicate once it has colonized a site. The dominance of the pennyroyal will pose a difficulty in meeting the standard for less than 10% cover of invasive species; therefore, an achievable standard will be applied using the DSL routine guidance definition for invasive species so as to not over manage the site based on one forb that may provide valuable function (late season pollinator habitat). The standards proposed will objectively measure achievement of the goals specific to this site, and are no lower than the DSL routine standards in any other way. Percent cover is absolute. There will also be a modified standard regarding the establishment of a diverse native species assortment due to the site’s potential for high plant species diversity. The performance standards for the Bank are outlined in Table 3.

**Table 3. Performance Standards for Area and Vegetative Monitoring**

<b>Area of Wetland Achieved</b>
The CWM site will have a minimum of 57.55 acres of slope/flats wetlands by year 5, as determined by applying a “delineation light” during spring of a year when precipitation has been near normal.
<b>Vegetation and Hydrology</b>
1. The percent native cover for Year 1 must be >40%, Year 2 must be >50%, Year 3 and thereafter must be >60%;
2. The cover of invasive* species is no more than 15% in years 1 through 5 after planting.
3. Bare substrate represents no more than 20% cover by year 5;
4. By Year 3, there are at least 25 different native species and by Year 5 there are at least 50 different native species; at least 6 of these native species will have > 5%

cover in at least 10% of the sampled area.
5. The depth range for vernal pool inundation is 3-18 inches
6. No standing water will persist permanently.

\* A plant species should automatically be labeled as invasive if it appears on the current Oregon Department of Agriculture Noxious Weed list, plus known problem species including *Phalaris arundinacea*, *Mentha pulegium*, *Holcus lanatus*, *Anthoxanthum odoratum*, and the last crop plant if it is non-native. Non-native plants should be labeled as such if they are listed as non-native on the USDA Plants Database. Two known exceptions are *Alopecurus geniculatus*, which Oregon Flora Project calls native, so DSL will consider it native; and *Alisma plantago-aquatica*, which according to USDA plants database, is a European species that occurs in Alaska & Washington, not Oregon. Because the USDA Plants database also lists *Alisma triviale* as native in Oregon and many other states, and also says *A. triviale* is a synonym of *A. plantago-aquatica*. DSL considers it most likely that Oregon plants are the native *Alisma triviale*. The Oregon Vascular Plant Checklist is currently being developed by Oregon State University's Oregon Flora Project and may be a better regional resource in the future.

Beginning in year 2 of monitoring, DSL may consider a non-native plant species invasive if it comprises more than 15% cover in 10% or more of the sample plots in any habitat class, and increases in cover or frequency from the previous monitoring period. Plants that meet this definition should be considered invasive for all successive years of monitoring.

Several reference sites in the vicinity of the Greenhill wetlands were used to inform decisions about appropriate performance standards and to anticipate desired vegetation communities and hydrology patterns. The adjoining BLM Greenhill Site, The Coyote Prairie Mitigation Bank, managed by the City of Eugene, and the Willow Creek Preserve, managed by The Nature Conservancy, are all included in the West Eugene Wetlands complex and are located within five miles of the Greenhill site. The majority of these sites are classified as Palustrine emergent wetlands with a combination of Slope and Flats HGM classes. The adjoining BLM site is highly diverse and supports listed species and open forest habitat. While the Coyote Prairie site is still in its development stage, the establishment of native plant species has been extremely successful, providing evidence of the botanical diversity that wet prairies can support. The Willow Creek Preserve has been managed and protected for several years and currently exhibits over 200 species of native plants. Based on the success observed at these reference sites, the performance standard regarding the number of different native species present at Greenhill was adjusted to reflect the site's biodiversity potential.

The Sponsor may propose adjustment of performance standards with justification based on, for example, review of regional environmental conditions including those at reference sites. Modification of performance standards must be approved in writing by co-chairs, in consultation with IRT.

## 9.0 Monitoring Plan

### 9.1 Monitoring Overview

An As-built report will be provided following completion of grading and initial seeding and planting. The As-built report will note any deviations from plans and note field fitting adjustments determined beneficial to the project from planned work. Annual monitoring will take place for 5 years. Current year vegetation data will be made

available for site review. Prior to year 5 a “delineation light” will be provided following the DSL routine guidance. Assuming ORWAP is still being used, a final functional assessment will be provided in year 5.

Annual monitoring will take place in spring/early summer to determine whether site conditions satisfy the criteria set forth in the performance standards and to ensure that the Bank’s development is in line with the goals and objectives outlined in this CM Plan. Monitoring will begin the first complete growing season following plant installation and seeding. The site will be monitored comprehensively for a minimum of five years, and monitoring reports will be submitted annually by January 31 of the year following data collection. Annual monitoring will be done for 5 years, or until performance standards have been met for 5 years. Annual monitoring reports will describe the data collected during field monitoring including, but not limited to, species lists, quantitative measures of native versus non-native species, invasive species cover, and hydrology observations, an assessment of the previous year’s rehabilitation activities and satisfaction of performance standard criteria, and any recommendations for subsequent adaptive management measures. An updated credit/debit ledger will be included in each annual monitoring report (see Exhibit D). Results from monitoring will inform adaptive management decisions.

#### *9.2 Monitoring Protocol*

The point-intercept method (Elzinga et al. 1998) will be used to quantitatively monitor vegetation. This method is currently being used at several wetland sites managed and monitored by the City of Eugene. Consistency in monitoring methods will allow for repeatability and reliability among monitoring staff, as well as facilitate cross-referencing of monitoring results.

Point-intercept sampling will take place in spring or early summer. A baseline will be created along the eastern edge of the site, parallel to Green Hill Road. From this baseline approximately 8-10 transects will extend east to west across the site. Markers will be installed along the baseline providing the location of each transect. Sample points will be taken along each transect at paced intervals of approximately 45 meters, with the first point randomly placed within 5 meters of the baseline. Approximately 125 sample points will be systematically interspersed along transects, and a tripod and steel rod will be used to determine the point location. For each point, every individual plant that intercepts the tip of the rod will be recorded. Each species will be recorded as an individual sample, meaning that cover may exceed 100%. If the rod does not contact any vegetation at the point, the recorder will note the presence of bare ground, moss, or litter. Plots with bare ground will be annotated if cause is late inundation. Percent absolute cover of each species will be calculated and an 80% confidence interval will be provided for all estimates. These calculations will be used to determine whether success criteria have been achieved for the current monitoring period.

Although point-intercept sampling provides a high level of accuracy, it occasionally discounts the presence of species with low cover values. Therefore, walking surveys will be conducted to provide measurements of species richness by species census. Walking

surveys will occur at least twice during the growing season. The surveyor will create a comprehensive list of all plant species observed during the walk-through. Special attention will be paid to recording and mapping the presence of invasive plant species and uncommon native, wetland plant species.

A representative set of pools will be sampled for depth in spring when water depths are expected to be at their deepest. A late summer walk-through of the wettest areas will map any persistent standing water areas.

Species of concern observed on the Bank will be noted, such as any sightings or occupancy by STHL or Fender's Blue Butterfly.

Approximately 8-10 photo points will be established along sampling transects after site construction. Photographs will be routinely taken from the designated points and included in monitoring reports. Photo points should appropriately capture important areas of hydrology and representative areas of vegetation.

## **10.0 Adaptive Management Plan**

ODOT will be the party responsible for management unless a Steward is identified prior to Bank Closure. Consideration will be given to the uncertainty of circumstances inherent in management of natural resources. Long-term adaptive management will ensure that the goals and objectives of the Bank are being achieved and that site conditions remain in accordance with criteria set forth by the performance standards. Adaptive management actions will be determined based on the review of data presented in annual monitoring reports and on-site observations throughout the years. Appropriate responses to site conditions will be made in a timely manner. No livestock is present on adjoining property, but, if there would be, then owners will be responsible for containing livestock. ODOT will work to ameliorate any adverse affects to the mitigation project caused by unanticipated circumstances. Off-road vehicle trespass impacts will be prevented as much as reasonable, and any significant impacts will be restored in a timely fashion. The Bank has a low risk of failure to achieve hydrology due to the soil type and modification to achieve desired hydroperiods will take place as needed. In case the site is not on track to meet success criteria, ODOT will develop a strategy for addressing all issues. Upon Bank closure, the presumed Steward (City of Eugene) will make decisions regarding adaptive management memorialized in the Long-term Management Plan.

## **11.0 Maintenance Plan**

The Bank will be planted with mixes of native forbs and grasses mostly. The current hydrology will be manipulated to allow for prolonged pooling and inundation to support establishment of characteristic native hydrophytic vegetation. Site enhancements and maintenance activities will be implemented to ensure the achievement of performance standards. Site visits will be conducted frequently to identify maintenance needs.

Site maintenance will occur following initial planting. Expected maintenance activities include the following: treatment of non-native plant species (spot application or spraying of herbicide), mowing to control invasive plant populations and encourage establishment of native species, replanting to offset plant mortality during the enhancement phase, maintenance of minor infrastructure (Green Hill Road access point, gate), and hydrologic adjustments and erosion control guided by site observations. Neighbors will be notified of herbicide use or prescribed fire prior to implementation.

Consistent with the Mitigation Work Plan, a predominance of forbs, sedges and rushes will be seeded during the first three years. Planting of native grass species will occur incrementally as successful establishment of native forb communities takes place. Monitoring and treatment of non-native and invasive species will be a priority at this site, especially regarding the extent of pennyroyal (*Mentha pulegium*) and nonnative *Agrostis (A. capillaris)* cover. Weed mapping done during monitoring visits will guide maintenance decisions and define priority areas. All areas that are treated for non-native species will be reseeded with a native seed mix.

## **12.0 Site Protection Description**

The Greenhill Bank is owned by the Oregon Department of Transportation and is therefore public space. It is the intention of ODOT to transfer the title of the property to the City of Eugene as the Bank Steward before successful closure of Bank development and crediting processes. Henceforth, the Steward will manage site maintenance tasks in accordance with the approved Long-term Management Plan. A Restrictive Covenant linked to the property specifies use restrictions and intentions, and is provided as Exhibit F.

## **13.0 Long-Term Management Plan**

The sponsor will submit a Long-Term Management Plan consistent with section V.F of this MBI Agreement. The Long-term Management Plan will be provided prior to final credit release of 25%. The site will continue to be maintained by the Steward after Bank Closure. It is expected that native plant populations and wetland hydrology will have been established within the initial monitoring period. Following the establishment period, routine management will be required to ensure that native wet prairie conditions are being sustained at the site. Long-term management will focus on the monitoring and control of any invasive plant species present on-site or in the surrounding area. Management activities may include mowing or manual control of vegetation, ecological burns, and targeted herbicide application when necessary. The Long-Term Management Plan also will address vandalism, incompatible uses (e.g., recreation, repairs to any on-site infrastructure (e.g. gate). ODOT will fund long-term management and maintenance of the site by providing the presumed Steward with an endowment via an Inter-Agency Agreement.

## 14.0 Literature Cited

- Adamus, P., J. Morlan, and K. Verble. 2010. Manual for the Oregon Rapid Wetland Assessment Protocol (ORWAP). Version 2.0.2. Oregon Department of State Lands, Salem, OR. (*manual*)
- Adamus, P., J. Morlan, and K. Verble. 2010. Oregon Rapid Wetland Assessment Protocol (ORWAP): calculator spreadsheet, databases, and data forms. Oregon Department of State Lands, Salem, OR. (*protocol*)
- Adamus, P.R. 2001. Guidebook for Hydrogeomorphic (HGM)-based Assessment of Oregon Wetland and Riparian Sites: Statewide Classification and Profiles. Oregon Division of State Lands, Salem, OR.
- Elzinga, C.L., D. Salzer, J.W. Willoughby. 1998. *Measuring and monitoring plant populations*. Bureau of Land Management (BLM) Technical Reference 1730-1, BLM National Business Center, Denver, Colorado. 477 pp.
- Oregon Department of State Lands. 2009. Routine Monitoring Guidance for Vegetation, Interim Review Draft version 1.0.
- Rempel, M., P. Adamus, and J. Kagan. 2009. Oregon Wetlands Explorer: an internet tool for ORWAP wetland assessment support and data archiving. Oregon State University Library and Institute for Natural Resources, Oregon State University, Corvallis, OR. Internet: <http://oregonexplorer.info/wetlands/orwap/>

**Exhibit D**  
**Crediting and Debiting Procedures**

Crediting generation was based on the range of mitigation credit ratio recommended by the Corps for rehabilitation work. Applying the relative ratios allows for a total of 11.67 credits to be generated from the rehabilitative work done at the Bank site. The number of credits generated will be determined by the co-chair agencies in consultation with the IRT. The credit status follows:

**Credit Generation**

<b>Cowardin Class</b>	<b>HGM Class</b>	<b>Acres</b>	<b>Ratio</b>	<b>Total Credits</b>
PEM	Slope/Flats	57.35	7.25:1	7.91
PEM	Slope/Flats	0.2	1:1	0.2
<b>TOTAL</b>		<b>57.55</b>		<b>8.11</b>

Debits will take place when permit review is complete and receipt is issued (Exhibit G). Credits will be released upon meeting the below schedule.

**Credit Release Schedule**

<b>Release</b>	<b>Percentage</b>	<b>Credits</b>	<b>Performance Standards to be met</b>	<b>Year Expected</b>
One	15%	1.22	Approval of MBI, Site Protection	2015
Two	5% (20%)	0.41	As-built Report	2015
Three	Up to 10% (30%)	0.81	1 <sup>st</sup> growing season performance standards	2016
Four	Up to 10% (40%)	0.81	2 <sup>nd</sup> growing season performance standards	2017
Five	Up to 10% (50%)	0.81	3 <sup>rd</sup> growing season of performance standards	2018
Six	Up to 10% (60%)	0.81	4 <sup>th</sup> growing season performance standards	2019
Seven	15% or up to a cumulative total of 75%	1.21	5 <sup>th</sup> growing season performance standards, delineation "light" and functional assessment	2020
Eight	25% (100%)	2.03	Approval of long-term management plan	2020

**Exhibit E**  
**Service Area Map and Description**

The Department of State Lands suggests a service area that extends to the boundary of the fourth-field hydrologic unit (HUC). The Greenhill Mitigation Bank is situated within the Upper Willamette 4<sup>th</sup>-field HUC (#17090003) which includes portions of Linn, Benton, Polk and Lane counties. An elevation limit of 600 feet within the Upper Willamette is also proposed based on the landscape position of the Bank. Exceptions for out-of-kind & out-of service area impacts will be determined by the co-chairs case-by-case.

Wetland impacts occurring to the same HGM and Cowardin classifications as the wetlands present on the Greenhill Bank site (slope/flats, PEM) are intended to be offset at the Bank. The service area map below provides boundary detail.



**Exhibit F**  
**Property Protection Instrument**

After recording, return to:

*{Insert Applicant name & Address}*

*{leave room for Recorder's stamp}*

**DECLARATION OF COVENANTS AND RESTRICTIONS and**

**ACCESS EASEMENT**

**FOR THE**

*{Greenhill Mitigation Bank, Corps permit #NWP-2011-383, DSL permit #52761-RF}*

THIS DECLARATION is made by Oregon Department of Transportation ("Declarant").

**RECITALS**

1. Declarant is the owner of the real property described in Exhibit "A," attached hereto and by this reference incorporated herein ( the "Property"), and has designated the Property as a compensatory mitigation site in accordance with Removal-Fill Permit # 52761 (the "DSL Permit") approved by the Oregon Department of State Lands ("Department"), and the Department of the Army permit #NWP-2011-383 ("Corps permit") approved by the US Army Corps of Engineers ("Corps").
2. Declarant desires and intends to provide for the perpetual protection and conservation of the wetland and waterway functions and values of the Property and for the management of the Property and improvements thereon, and to this end desires to subject the Property to the covenants, restrictions, easements and other encumbrances hereinafter set forth, each and all of which is and are for the benefit of the Property;
3. The Department has accepted the mitigation plan for the Property under ORS 196.800 et seq, and the Corps has likewise accepted the mitigation plan under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act.

**ARTICLE 1**  
**DEFINITIONS**

1.1 “Declaration” shall mean the covenants, restrictions, easement, and all other provisions set forth in the Declaration of Covenants and Restrictions.

1.2 “Declarant” shall mean and refer to Oregon Department of Transportation (ODOT), the owner of the Property, and the owner’s heirs, successors, and assigns.

1.3 “DSL permit” shall mean the final document approved by the Department that includes the mitigation plan and which formally establishes the mitigation site and stipulates the terms and conditions of its construction, operation and long-term management. A copy of the DSL permit may be obtained at the Department of State Lands, 775 Summer St. NE, Salem, OR 97301; phone 503-986-5200.

1.4 “Corps permit” shall mean the final document approved and issued by the Corps which includes the mitigation plan describing where and how the compensatory mitigation will be completed, monitored, managed, and maintained. A copy of the Corps permit associated with this Declaration may be obtained at the office of the US Army Corps of Engineers, Regulatory Branch, 333 SW First Ave., Portland, OR 97208; Phone 503-808-4373.

1.5 “Property” shall mean and refer to all real property subject to this Declaration, as more particularly set forth in Exhibit “A.”

**ARTICLE 2**  
**PROPERTY SUBJECT TO THIS DECLARATION**

The Property described in Exhibit A is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration.

**ARTICLE 3**  
**DECLARANT REPRESENTATIONS**

Declarant represents and warrants that after reasonable investigation, and to the best of its knowledge, that no hazardous materials or contaminants are present that conflict with the conservation purposes intended; that the Property is in compliance with all federal state, and local laws, regulations, and permits; that there is no pending litigation affecting, involving, or relating to the Property that would conflict with the intended conservation use; and that the

Property is free and clear of any and all liens, claims, restrictions, easements and encumbrances that would interfere with the ability to protect and conserve the Property.

**ARTICLE 4  
GENERAL DECLARATION**

Declarant, in order to discharge in part its obligations under the DSL permit and the Corps permit, declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements and other encumbrances in this Declaration, in order that it shall remain substantially in its restored, enhanced, preserved, open and natural condition, in perpetuity. The terms and conditions of this Declaration shall be both implicitly and explicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or any part of the Property. No modification or release of this Declaration will be effective unless authorized in writing by the Department and by the Corps. Any amendments must be signed by the Department and must be recorded in the official records of the county in which the Property is located.

**ARTICLE 5  
USE RESTRICTIONS, MANAGEMENT RESPONSIBILITIES,  
AND RESERVED RIGHTS**

Declarant is subject to any and all easements, covenants and restrictions of record affecting the Property.

A. USE RESTRICTIONS. Except as necessary to conduct, remediate or maintain the Property consistent with the DSL permit and the Corps permit, the actions prohibited by this covenant include:

1. Removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of native vegetation in the Property, including any disturbance or change in the natural habitat of the Property shall be allowed only to the extent that it promotes the mitigation goals and objectives established for the Property. Hazard trees that pose a specific threat to existing structures including fences or pedestrian trails may be felled. Native vegetation may be mowed after July 1 to abate fire hazard or as appropriate to promote mitigation goals and objectives. Controlled ecological burns are permitted after July 1.

2. There shall be no agricultural, commercial, or industrial activity undertaken or allowed in the Property; nor shall any right of passage across or upon the Property be allowed or granted if that right of passage is used in conjunction with agricultural, commercial or industrial activity.
3. No domestic animals shall be allowed to graze or dwell on the Property unless they are intentionally introduced to promote the mitigation goals and objectives established for the Property.
4. There shall be no filling, excavating, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock minerals or other materials, nor any storage nor dumping of ashes, trash, garbage, or of any other material, and no changing of the topography of the land of the Property in any manner once the wetlands are constructed unless approved in writing by the Department and by the Corps.
5. There shall be no construction or placing of buildings, mobile homes, advertising signs, billboards or other advertising material, vehicles or other structures on the Property.
6. There shall be no legal or de facto division, subdivision or partitioning of the protected Property.
7. Use of motorized off-road vehicles for recreational purposes is prohibited but shall be permitted for use in land management activities that promote the mitigation goals and objectives established for the Property.

B. MANAGEMENT RESPONSIBILITIES. Declarant shall take all reasonable action to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the mitigation purposes of the Property or that are otherwise inconsistent with this Declaration.

C. RESERVED RIGHTS. Declarant reserves all other rights accruing from Declarant's ownership of the Property including but not limited to the exclusive possession of the Property, the right to transfer or assign Declarant's interest in the same; the right to take action necessary to prevent erosion on the Property, to protect the Property from losing its wetland or waterway functions and values, or to protect public health or safety; and the right to use the Property in any manner not prohibited by this Declaration and which would not defeat or diminish the conservation purpose of this Declaration.

The Declarant specifically reserves the right to use the Property for the purposes of (a) compatible recreation, such as hiking and nature watching; (b) education, including student field trips and on-site demonstration and study; and (c) research, intended to forward our understanding of ecology, restoration science, and environmental studies, which reserved rights are deemed to be consistent with the purposes enumerated in the permit.

**ARTICLE 6**  
**EASEMENT (RIGHT OF ENTRY)**

Declarant hereby grants to the Department an easement and right of entry on the Property for the purpose of physically accessing the Property at all reasonable times to inspect the Property in order to monitor and to ascertain whether there has been compliance with this Declaration and the DSL permit. In the event that the Property lacks access via a public road or other common area, Declarant grants to the Department an easement over and across any other property of Declarant, the use of which is necessary to access the Property. The Declarant hereby grants to the Corps a right of entry to ascertain compliance with the Corps permit and this Declaration.

**ARTICLE 7**  
**GENERAL PROVISIONS**

A. NOTICE. The Department and the Corps shall be provided with a 60-day advance written notice of any legal action concerning this Declaration, or of any action to extinguish, void or modify this Declaration, in whole or in part. This Declaration, and the covenants, restrictions, easements and other encumbrances contained herein, are intended to survive foreclosure, tax sales, bankruptcy proceedings, zoning changes, adverse possession, abandonment, condemnation and similar doctrines or judgments affecting the Property. A copy of this recorded Declaration shall accompany said notice.

B. VALIDITY. If any provision of this Declaration, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Declaration, or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

IN WITNESS WHEREOF, the undersigned being Declarant herein, has executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
County, Oregon

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OREGON     )  
                                  )  
County of \_\_\_\_\_  )

ss:

This instrument was acknowledged before me on \_\_\_\_\_ (date) by \_\_\_\_\_ (name of person) as \_\_\_\_\_ (title) of Applicant firm's name of \_\_\_\_\_ County, Oregon.

\_\_\_\_\_  
Signature of Notarial Officer  
My Commission Expires: \_\_\_\_\_

GRANTEE: The State of Oregon, Department of State Lands, approves Declarant's conveyance of an easement in favor of the Department.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attachment:  
Exhibit A, legal description and labeled map of the Property

**Exhibit G**  
**Sample Credit Receipt**

*The Sponsor will complete a credit receipt using the template below for every sale or transfer of credits, and immediately provide a copy of each receipt to all co-chair agencies, regardless of jurisdiction.*

- Date
- Number of credits sold
- Acres of wetland impacts, by HGM and Cowardin class
- HGM and Cowardin class of the credits being sold to compensate for those impacts
- Permittee Name
- Project Name
- Corps Permit Number
- DSL Permit Number
- (Or) Other Project Identifier
- Impact HUC (10 digit HUC)

By selling credits to the permittee, ODOT hereby assumes responsibility for fulfilling the mitigation obligation of the Permit(s) listed above.

Sponsor signature: \_\_\_\_\_

**Exhibit H**  
**Sample Credit Ledger**

Transaction Date	Transaction Type (Withdrawal or Release)	Jurisdiction (State, Federal)	Number of Credits	Credit Unit (acres)	State Permit Number	Federal Permit Number	Credit Type (HGM, Cowardin)	Balance of Released Credits

**Exhibit I  
Definitions**

**BUFFER** - An upland, wetland, or riparian area that enhances the functions and/or protects the functions of a mitigation bank from disturbance associated with adjacent land uses.

**CO-CHAIRS** – The Corps and DSL representatives who make decisions regarding bank establishment and operation. The USFWS and/or NMFS may be co-chair agencies if a bank also serves to mitigate for losses to federally listed species or habitats. Each co-chair agency retains independent authority to implement their respective regulations.

**CONSERVATION** – Also known as preservation. The preservation and perpetual protection and maintenance of certain existing high quality wetlands or aquatic resources that would otherwise be threatened with destruction or degradation, using appropriate legal and physical mechanisms.

**CREATION** – Also known as establishment. To establish or convert an area that has never been a wetland to a jurisdictional wetland. Results in a gain in aquatic resource area and function.

**CREDIT** – A unit of measure of the increase in wetland functions or area achieved at a mitigation bank site. Unless otherwise specified in the MBI or authorization, one wetland credit is sufficient to offset one acre of wetland loss. Advance credits are those credits that are released for sale in advance of full performance of a mitigation bank, and secured by a financial assurance. Certified credits are those credits that are generated after the bank is meeting all performance standards.

**DEBIT** – A unit of measure representing the reduction of function or loss of area of wetlands or other aquatic resources at the site of impact.

**ENDOWMENT** - A dedicated, non-wasting account to be established by the Sponsor concurrent with the operation of the MBI, and which shall generate interest to be used exclusively for the ongoing management of the mitigation bank for conservation purposes consistent with the MBI, associated conservation easement and long-term management plan.

**ENHANCEMENT** – Also known as rehabilitation. Actions or treatments that increase the function(s) of an existing degraded wetland. Enhancement does not result in a gain in aquatic resource area.

**ESTABLISHMENT** – See Creation.

**FINANCIAL ASSURANCES** – A financial instrument such as an irrevocable letter of credit, escrow account, performance bond, or other surety mechanism accessible to DSL, required of the Sponsor to ensure that the mitigation obligations of the bank can be

fulfilled in the event of default or incapacity of the Sponsor. The amount of the assurance shall be sufficient to ensure a high level of confidence that the goals of the bank will be achieved and maintained over the long term pursuant to the plans set forth in the MBI.

**FUNCTIONS** – The physical, chemical, and biological processes that occur in aquatic ecosystems. Examples include: support of habitat for various fish, wildlife, and plants; retention and detention of water; adsorption and transformation of nutrients and pollutants, and filtration and settling of sediment.

**LEDGER** – A cumulative accounting spreadsheet of all credits released and sold.

**MITIGATION** – Sequentially avoiding impacts, minimizing impacts, and compensating for impacts to aquatic resources.

**MITIGATION BANK** – A site or sites where wetlands, other aquatic resources, and any associated buffers are restored, enhanced, created, or protected expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. A mitigation bank sells compensatory mitigation credits to permittees whose mitigation obligation is thereby transferred to the Sponsor. The establishment and operation of a mitigation bank is governed by the MBI.

**MITIGATION BANK INSTRUMENT** – (MBI) The legally binding and enforceable agreement between the Director of DSL, the District Engineer of the Corps, and a mitigation bank sponsor that formally establishes the mitigation bank and stipulates the terms and conditions of its construction, operation, use, and long-term management.

**INTERAGENCY REVIEW TEAM (IRT)** – A committee of local, state, federal, and tribal resource agency representatives that provides advice to the DSL and the Corps on establishment and management of mitigation banks. The Corps and DSL are the co-chairs and the final decision makers. For a Conservation Bank, the USFWS and/or NMFS may be co-chair agencies.

**MITIGATION SITE PLAN** – A detailed drawing that identifies specifically where aquatic resources and associated upland buffers will be restored, created, enhanced, and/or preserved on the mitigation bank.

**PERFORMANCE STANDARDS** – Observable and measurable physical and biological indicators used to determine if a mitigation project is meeting its objectives. Credit releases are linked to achievement of minimum performance standards required to meet the objectives for which the Bank was established.

**PRESERVATION** – See Conservation.

**RE-ESTABLISHMENT** - See Restoration.

**RESTORATION** – As used here, the re-establishment of wetland hydrology to a former wetland sufficient to support wetland characteristics, with a goal of returning historic or natural functions to the site.

**SERVICE AREA** – The geographic area within which impacts can be mitigated at a specific mitigation bank, as designated in the MBI.

**SPONSOR** – Any public or private entity responsible for establishing and operating a mitigation bank. The Sponsor is the entity that assumes all legal responsibilities for carrying out the terms of the MBI, unless specified otherwise in the MBI.

**STEWARD** – The landowner or easement holder of the Bank lands charged with long-term maintenance and management responsibility. The Sponsor is the Steward until such responsibilities are formally transferred to another party, with the approval of the co-chair agencies.