US Army Corps of Engineers
Portland District

DEPARTMENT OF THE ARMY PERMIT

REGIONAL GENERAL PERMIT FOR Discharges into Vernal Pool Wetlands and Other Waters of the United States within the Agate Desert Region of Jackson County, Oregon (RGP-5)

PERMIT NO. NWP-2007-1005/1

EFFECTIVE DATE: This permit becomes effective when signed by the Federal official designated to act for the Secretary of the Army.

EXPIRATION DATE: January 1, 2021

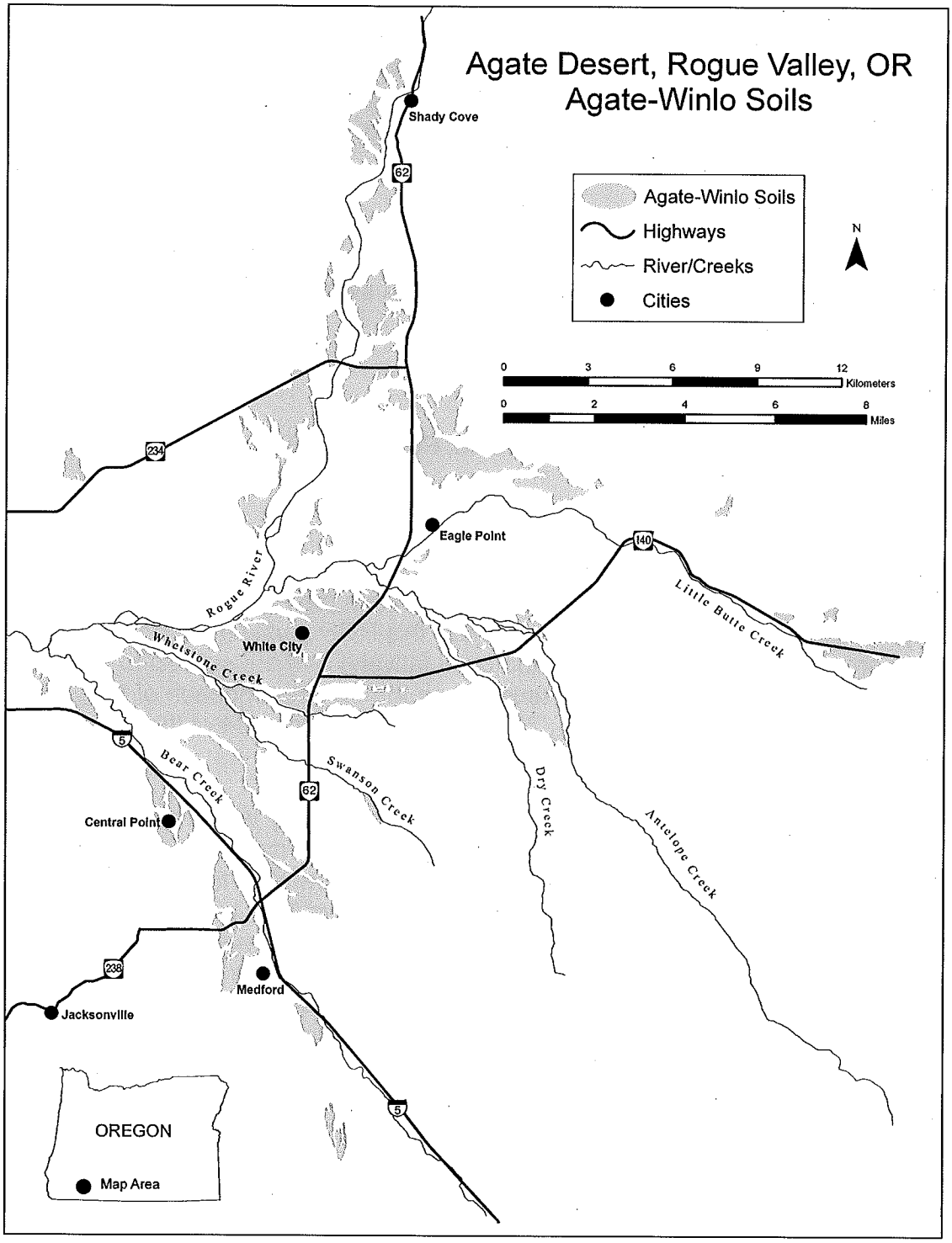
ISSUING OFFICE: U.S. Army Corps of Engineers, Portland District, Regulatory Branch (Corps)

1. AUTHORITY. This Regional General Permit (RGP) authorizes the general public to place fill material into certain waters of the United States (U.S.) within the Agate Desert region of Jackson County, Oregon. Individual actions authorized under this RGP must cause no more than minimal adverse environmental effects (individually and cumulatively) and are subject to the terms and conditions contained herein. This RGP is issued upon the recommendation of the Chief of Engineers as provided by 33 CFR 325.2(e)(2), pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).

RGP-5 was developed through the collaboration of an inter-agency team representing the Corps, U.S. Fish and Wildlife Service (USFWS), Environmental Protection Agency, and Oregon Department of State Lands (DSL). The intent is to streamline the regulatory requirements of the Clean Water Act (CWA), Oregon's Removal/Fill Law (R-F Law), and the Endangered Species Act (ESA), while improving conservation of vernal pool habitat complexes, and associated plant and animal species. This RGP does not eliminate the requirement for each applicant to demonstrate avoidance and minimization of impacts to waters of the U.S. Proposed projects which do not meet the eligibility requirements of this RGP require separate authorization from the Corps by other appropriate permit tools. Nationwide permits (NWPs) may not be available for use based on the requirements of current NWP General Conditions or Portland District Regional Conditions.

2. PROJECT LOCATION. This RGP applies to the Agate Desert region of Jackson County, Oregon which is within the geographic area of Agate-Winlo Soils as shown on Figure 1. This area generally conforms to the boundaries of the Agate-Winlo soil map unit as mapped by the Natural Resources Conservation Service's Jackson County soil survey and is part of the

Figure 1: Agate-Winlo Soils in the Rogue Valley



Klamath Mountain vernal pool region as described in the USFWS final Recovery Plan for Vernal Pool Ecosystems in California and Southern Oregon (Recovery Plan) (USFWS 2005).

3. ACTIVITIES AUTHORIZED BY THIS RGP. This RGP authorizes the loss of up to 2 acres of vernal pool wetlands or other waters of the U.S., or 15 acres of vernal pool complex (whichever is less), resulting from a single and complete project for activities including but not limited to:

a. Commercial, residential, or industrial development;

b. Installation and maintenance of utilities, and associated infrastructure;

c. Road development and maintenance, including road crossings;

d. Wetland restoration and enhancement; and

e. Sand, gravel, and aggregate removal except from within any active stream channel, bed or channel migration zone.

This RGP only authorizes discharges into the following wetlands or other waters if they are determined to be jurisdictional and occur in mapped Agate-Winlo soils:

a. Existing vernal pool wetlands;

b. Ditches or other water conveyances constructed solely to drain vernal pool lands;

c. Roadside ditches that are not part of a stream tributary system;

d. Channels excavated through uplands for irrigation water and return flows; and

e. Palustrine emergent wetlands that were historically vernal pool wetlands.

4. PROCEDURES FOR USE OF THIS RGP. To use RGP-5, a prospective permittee must first notify the Corps by submitting a pre-construction notification (PCN) and may not proceed with the proposed work until the District Engineer or his designee issues written notification that the proposed project meets the requirements of this RGP and is authorized.

a. Contents of Pre-Construction Notification: The PCN may be made by means of the Department of the Army standard application form (ENG Form 4345) or the Corps/DSL Joint Permit Application form and must include the following information:

(1) Name, address, and telephone number(s) and point of contact/agent.

(2) Location of the proposed project.

(3) Purpose and need for the proposed activity.

(4) A complete description of the proposed project/activity. All activities the applicant plans to undertake, which are reasonably related to the same project and for which a Department of the Army permit would be required, must be included.

(5) Project drawings to include a vicinity map, and section and plan views. Drawings must be completed in black ink on letter size paper (8 ½ by 11) to facilitate electronic transmittal if necessary. Detailed engineering plans and specifications are not required.

(6) If a phased development is proposed, the PCN must include a master plan showing full build-out of the project site.

(7) A delineation of special aquatic sites and other waters of the U.S. on the project site or a concurrence letter from the Corps (less than five years old) of a previously submitted delineation. Wetland delineations must be prepared in accordance with the current method required by the Corps.

(8) A functional assessment of the wetlands on the project site following the Agate Desert Vernal Pool Final Draft Functional Assessment Methodology, (http://www.fws.gov/oregonfwo/FieldOffices/Roseburg/VernalPools/Documents/AgateFunctionalAssessment.pdf), April 2007.

(9) Written documentation indicating how impacts to waters of the U.S. are to be avoided and minimized.

(10) If unavoidable impacts to waters of the U.S. will occur, the PCN must include a mitigation plan (with a long-term management plan) consistent with the mitigation requirements described in Section 6.

(11) If the activity will result in the creation of new impervious surfaces, the PCN must include a post-construction stormwater management plan (SWMP). See 4b(1)(c) for guidance on developing this plan.

(12) If alternatives to the performance standards outlined in Section 7 are proposed, the PCN must include the language of the original performance standard, the requested change in standard language, and a rationale for that change. The Corps will coordinate the request with DSL and USFWS as part of the permit evaluation process.

(13) If cultural resource surveys have been completed for the project and/or mitigation sites, reports documenting the results of the surveys shall be submitted with the PCN to facilitate coordination with the State Historic Preservation Officer (SHPO) and appropriate Native American Indian Tribes. As part of the permit evaluation process, the Corps must coordinate with the SHPO and Tribes as indicated in 4.d and 4.e.

b. Other Information Requirements. As part of the permit evaluation process, other information may be needed by the Corps or another agency before final approvals are given to proceed with the proposed activity. Applicants are encouraged to submit the complete PCN package to DSL, DEQ, and USFWS to facilitate reviews by those agencies.

(1) Oregon Department of Environmental Quality (DEQ) Requirements: Project-specific Water Quality Certification must be received from DEQ before a Department of the Army authorization issued under RGP-5 will become valid. Information required to be submitted to DEQ by the applicant to meet Oregon Administrative Rules (OAR 340-048-0020) and to inform a decision on the DEQ 401 Water Quality Certification is listed below.

(a) Land Use Compatibility Statement (LUCS) that demonstrates the activity complies with the local comprehensive plan; and,

(b) Stormwater Management Plan: For all activities that involve impervious surfaces, the permittee must obtain written DEQ approval of a Stormwater Mangement Plan prior to construction. Submittal of the plan to DEQ at the same time the PCN is submitted to the Corps will streamline the project review. Assistance in developing an approvable stormwater management plan is available in DEQ's *Stormwater Management Plan Submission Guidelines for Removal/Fill Permit Applications Which Involve Impervious Surfaces*, January 2012 (or most current version), available at:
http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidelines.pdf.

(2) Endangered Species: The USFWS assumes that all vernal pool wetlands are occupied by fairy shrimp, and that all activities which degrade or remove VPC habitat will adversely affect the species and therefore require incidental take authorization under the ESA. A biological opinion, "Programmatic Formal Consultation on the U.S. Fish and Wildlife Service's Vernal Pool Conservation Strategy for Jackson County, Oregon", dated January 26, 2011 (reference number 13420-2011-F-0064) has been prepared and compliance with the provisions of this opinion is required. Efforts undertaken at the initiative of project proponents to demonstrate that specific VPC sites are not occupied, or as required by the USFWS to measure baseline occupancy and species-based performance standards included in the proposed action, need to use USFWS-approved species survey protocols. In the first case (demonstrating non-occupancy), five consecutive years of survey data will be required. In the latter cases (determining baseline occupancy and compliance with performance standards), the length and frequency of survey efforts will vary depending on the specific VPC site and the issue the survey data will address. These specific survey requirements are described in detail in the biological opinion. Questions regarding specific requirements of the biological opinion should be addressed to the USFWS.

c. USFWS review of mitigation plans/monitoring reports. The USFWS will evaluate each mitigation plan and determine:

(1) Whether the plan fulfills the terms and conditions of the VP BiOp and does not exceed the ITS of the VPBO,

(2) Whether the plan activities are necessary and appropriate to restore or enhance VPC habitat, and

(3) Whether the plan contains an adequate noxious weed management plan.

The Corps will coordinate review of the mitigation plan with USFWS as part of the permit evaluation process. The review time for mitigation plans by the Service shall be included in the time necessary to complete an overall compliance check that a proposed project meets the conditions of the VP BiOp. Depending on staff availability and consultation priorities, the Service will respond to the Corps within 30 days of receiving the notification indicating whether the action is approved or disqualified. Early coordination with the Service, in the form of pre-application meetings, is encouraged to ensure a 30-day review timeframe.

d. Coordination with the State Historic Preservation Officer (SHPO). All requests for Department of the Army authorizations under this RGP will be reviewed by the Corps Regulatory Branch archeologist to make an initial Section 106 effects determination. If there is not enough information available in the project file to make a determination, the applicant will be requested to provide additional information. SHPO notification will be done according to current Regulatory Branch protocols and agreements based on the project-specific effects determination.

e. Notification of Native American Tribes. Notification will be made electronically to Native American Tribes with an interest in the area in which the proposed action would occur. The Tribes will have 30 calendar days to respond to the Project Manager indicating whether the proposed project would impact such things as cultural resources, treaty fishing access sites, usual and accustomed areas, burial sites, or Traditional Cultural Properties.

5. DEFINITIONS.

a. Drought Year: A year in which precipitation prior to and during the growing season is less than the 30% probability level. The procedures for determining "below normal" rainfall are found in the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0), September 2008.

b. Loss of waters of the United States: Waters of the U.S. that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the U.S. is a threshold measurement of the impact for determining whether a project may qualify for the RGP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions.

c. Mitigation Bank: A site, or suite of sites, where natural resources are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts to similar resources authorized by Federal or state permits. This general term is

often used synonymously with more specific terms such as "wetland mitigation bank" or "conservation bank." Banks are established through a formal agreement or Bank Instrument signed by the regulatory agencies and a bank sponsor. Once a bank is approved, the sponsor performs the restoration, enhancement, or protection and management activities to generate credits which can be used to compensate for the environmental impacts of other projects. The regulatory agencies will release credits for sale by the sponsor as soon as the bank meets the established performance standards. The sponsor, rather than the credit purchaser, is responsible for fulfilling each mitigation obligation by conducting the implementation, maintenance and long term stewardship of the mitigation bank.

d. Native/Invasive Species. Any species on the Oregon Department of Agriculture noxious weed list, plus pennyroyal (Mentha pulegium), reed canarygrass (Phalaris arundinacea), and any other non-native species that exceeds 10 percent cover and 10 percent frequency in sample plots, and shows an increasing trend from any previous sampling season. Nonnative plants should be labeled as such if they are listed as non-native on the USDA Plants Database (http://plants.usda.gov/java/).

e. Permittee Responsible Mitigation Projects: Actions undertaken by a permittee to compensate for impacts resulting from a specific project. The permittee is responsible for implementation, success, and long term management of the mitigation project.

f. Protect and Manage Mitigation: Protect and manage is a type of preservation mitigation, which is defined as the removal of a threat to, or preventing the decline of, aquatic resources. Protect and manage mitigation shall include the establishment or management of native biological communities throughout the site to meet and maintain the performance standards.

g. Restore and Manage Mitigation: Mitigation which re-establishes functioning vernal pool topography, hydrology, and native biological communities in areas where previously existing vernal pools have been converted to upland by filling, leveling, or draining, or converted to open water. Restore and Manage mitigation shall include the establishment of native plant communities throughout the site to meet and maintain the performance standards.

h. Single and Complete Project: Consistent with 33 CFR 330.2(i), a single and complete project is the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. Non-linear single and complete projects must have independent utility. Linear projects include all crossings of a single water of the U.S. at a specific location.

i. Steward: The party responsible for long-term management and monitoring of the mitigation site after it has been approved and closed by the Corps.

j. Vernal Pool: A seasonal wetland found on shallow soils over an impermeable hardpan layer or bedrock. In Jackson County, vernal pools and associated uplands are known to support several rare species.

k. Vernal Pool Complex (VPC) and VPC Habitat: A tract of land that includes vernal pool wetlands, the upland mounds between them, and the area within 100 feet from the edges of the vernal pools.

6. MITIGATION REQUIREMENTS. Mitigation can be accomplished as permittee responsible mitigation projects or by using an established mitigation or conservation bank. Mitigation amounts for vernal pool wetland impacts will be based on approved wetland delineation acreage and vernal pool functional assessment scores. The function assessment method to be used for this RGP is the Agate Desert Vernal Pool Final Draft Functional Assessment Methodology (http://www.fws.gov/oregonfwo/FieldOffices/Roseburg/VernalPools/Documents/AgateFunctionalAssessment.pdf), April 2007. Out-of-kind mitigation is not allowed for vernal pool impacts. All mitigation for impacts authorized by this RGP must occur within vernal pool wetland complex and must meet the ratios, site suitability criteria, and performance standards and methods described below.

Mitigation for vernal pool impacts consists of two categories which are defined above: 1) Protect and Manage, and 2) Restore and Manage. Enhancement and creation are not mitigation options under this RGP. For each project, the Corps will confirm whether mitigation is required and if so the level of appropriate and practicable compensatory mitigation. Compensatory mitigation if required shall be commensurate with the anticipated impacts of the project and the requirements of this RGP.

a. Long-Term Management Plan: Consistent with 33 CFR 332.7(d), mitigation projects under this RGP shall include a plan describing long-term management of the site necessary to ensure the long-term sustainability of the aquatic resources and the wetland-dependent listed species. The permittee will be responsible for long-term management of the compensatory mitigation project unless transfer of those responsibilities, to a land stewardship entity or private land manager, has been approved by the District Engineer. The long-term management plan will include a description of long-term management needs and annual cost estimates for these needs, and will identify the funding mechanism used to meet those needs.

b. Long-Term Mitigation Site Protection: When permittee-responsible compensatory mitigation is required by the District Engineer, the permittee shall provide long-term protection for the mitigation site through a real estate instrument (e.g., deed restriction or conservation easement) or other available mechanism. The appropriate long-term protection mechanism will be determined by the District Engineer based on project-specific review and must be in place prior to initiating the permitted activity.

c. Mitigation Ratios: The amount of mitigation required to offset a vernal pool impact will depend on both the type of mitigation conducted (Mitigation Site Base Ratios) and the quality of the vernal pool site being impacted (Impact Site Multipliers). More mitigation will be required to offset losses of higher quality wetland resources. The wetland acreage for both impact sites and mitigation sites is determined based on a delineation of the wetlands at each site.

Mitigation Site Base Ratios apply to the type of mitigation conducted:

(1) Protect & Manage: 1.5:1 = 1.5 acres of wetland protected generates 1 wetland credit or 1 combination credit.

(2) Restore & Manage: 1:1 = 1 acre of wetland restored generates 1 wetland credit or 1 combination credit.

d. Impact Site Multipliers apply to the ratios for impact sites as shown below. This multiplier determines the number of credits that must be purchased or used to offset a particular loss (impact) to a wetland or other waters.

Vernal Pools, Low quality	2.0
Other waters	2.0
Vernal Pools, Medium quality	2.5
Vernal Pools, High quality	3.0

e. Vernal pool impact site quality definitions:

(1) Low Quality: Impact sites where composite function assessment score is in lowest 30th percentile, and less than ½ acre of vernal pool wetland will be impacted.

(2) Medium Quality: Impact sites that meet any one of the following conditions:

(a) The composite function assessment score is in lowest 30th percentile and more than ½ acre of vernal pool wetland will be impacted;

(b) The composite function assessment score is between the 30th and 70th percentiles;

(c) The vernal pool wetland within a designated critical habitat unit will be impacted; or

(d) The vernal pool wetland impacted is functionally part of [1] or physically contiguous with any VP complex of 10-30 acres.

(3) High Quality: Impact sites where the composite function assessment score is over 70th percentile or where vernal pool wetland impacted is functionally part of or physically contiguous with any VP complex greater than 30 acres.

The method for assessing the function scores for vernal pool complexes as well as the composite function assessment scores for previously inventoried vernal pool complexes, to determine the percentile ranking, are available in the Agate Desert Vernal Pool Final Draft Functional Assessment Methodology on the USFWS website.

[1] Located and functioning on the landscape in such a way as to contribute to the hydrological regime, soils, topography, and vegetative conditions (that provide suitable habitat for the typical suite of vernal pool species) of the adjacent or proximal vernal pool complex.

(4) Other Waters: This category applies to impact sites involving any one of the other waters (items b through e) as listed on page 3 of this RGP.

f. Examples: Applying the Ratios and Multipliers. For a project proposing to purchase credits from an approved mitigation bank, the number of credits to be purchased depends on the quality of the wetland site being impacted. For example, for impacts to a medium-quality vernal pool wetland, multiply the acreage of wetland impact by 2.5 to get the number of credits to buy. The number of credits generated by the bank has already been determined in the Bank Instrument.

For permittee responsible mitigation, use both the multiplier for the impact site and the mitigation site base ratio for the mitigation project. For example, to offset the loss of 1 acre of medium quality vernal pools (multiplier is 2.5), a permittee could complete a Protect and Manage arrangement (base ratio is 1.5: 1) resulting in 3.75 acres of wetland needed to be protected. Of course, this 3.75 acre mitigation project would have to meet the site suitability, size, and management criteria as specified below.

g. Mitigation Site Suitability Criteria: All of the following criteria must be met for a mitigation site to qualify under this general permit:

(1) Size. The total effective size of a mitigation project must include at least 70 contiguous acres of vernal pool complex, with some exceptions as described below. Larger tracts are more likely to support viable populations of plants and animals in the long term and have fewer adverse edge effects along the perimeter. Contiguous parcels of 70 acres or more of VPC have a higher likelihood of providing adequate functions over the long-term than smaller parcels when located within areas in which the surrounding land uses are not compatible with long-term VPC conservation. Smaller parcels may be adequate when they exist as ecologically connected "satellite" areas to the larger sites described above. Smaller parcels (10-70 acres) of VPC may also be adequate in isolation if they exist within areas in which surrounding land uses are expected to be compatible with long-term VPC conservation.

Effective size means the agencies will consider adjacent, permanently protected parcels dedicated to vernal pool conservation as part of the acreage total even if they are owned and managed by another party. For example, a 10-acre mitigation proposal could be approved under this proposal if it has uninterrupted continuity of soils, water flows, and topography with an adjacent approved mitigation or conservation project of 60 acres.

(2) Buffers. The mitigation project parcel(s) must include sufficient area to maintain the hydrologic regime, soils, topography, and vegetative conditions necessary to provide suitable habitat for the typical suite of vernal pools species. The vernal pool complex to be restored or protected must include the vernal pool wetlands, as well as the surrounding upland mounds and adjacent areas that adequately buffer the vernal pool habitats against ecological edge effects and effects from adjacent land uses. This buffer or "protective fringe" is important to protect the vernal pool habitat from disruptions in water supply, and degradation of the water quality entering the site. Generally, uplands between wetlands (pools) and within 100 feet

from the edges of the pools must be included under the same land protection measures as the associated vernal pools.

(3) Rare species. All sites proposed as mitigation projects must demonstrate some level of occupancy by at least one of the ESA listed species. This must include fairy shrimp occupancy of at least 10% of vernal pools by the time the site is approved. Proposed management actions can include introduction of additional listed species or enhancement of current population levels.

(4) Functionality. All sites proposed as mitigation projects must meet the 70th percentile ranking of the function assessment scores to qualify, or the applicant must demonstrate that sustainable restoration or management could raise the site to meet this threshold level of functionality within the monitoring period.

(5) Hardpan. All mitigation project sites must have an intact hardpan layer. If the hardpan layer is perforated at the perimeter of the site, or if activities such as underground utility lines are anticipated that would perforate the hardpan, then the area of the mitigation site that is within 100 feet of the edge of the hardpan shall generate half as many mitigation credits.

(6) Net gain. Mitigation projects proposed for lands that are already designated for conservation purposes must provide benefits to vernal pool habitats and species above and beyond those resulting from the current conservation status of the lands. For such cases, the number of credits generated will be determined by the Corps in consultation with DSL and USFWS.

(7) No adverse effects. To the extent practicable, mitigation projects shall be sited and/or managed in such a way that establishment and maintenance of the sites will not result in adverse effects to federally listed species or vernal pool habitats outside of the proposed area.

(8) Multiple parcels. Mitigation projects may be composed of a single contiguous parcel of land or several geographically separate parcels provided each parcel satisfies the criteria described above.

(9) Restoration component. Restoration of historically altered or lost vernal pool wetlands at all mitigation projects, even those primarily based on protection, is encouraged and will be credited as described for "Restore & Manage".

7. PERFORMANCE STANDARDS. All mitigation projects must meet the performance standards in this section unless the Corps determines, in consultation with DSL and USFWS, an exception is warranted or an alternative standard meets the goal. Information needed to evaluate changes to performance standards are described in Section 4.a(11). A permittee may provide monitoring data from appropriate reference sites to support a finding that an exception should be allowed because regional factors such as abnormal weather conditions may be influencing the monitoring data and the data are within the normal variability of the region.

Mitigation projects are not required to meet performance standards during drought years but do need to be in compliance beginning with the next non-drought year. Performance standards must be met for 3 consecutive non-drought years unless otherwise specified below (see Section 8 for further details).

a. Hydrology and Topography Standards. The goal is to restore and sustain the natural range of variability in topography and hydrology of least-disturbed reference site vernal pools.

(1) Hydrology

(a) The acreage of vernal pool wetlands meeting the hydrology criterion in the 1987 Corps of Engineers Wetlands Delineation Manual (Corps 1987) and the Arid West Regional Supplement (Corps 2008) on the mitigation or bank site shall not decline below the initial baseline acreage.

(b) Each vernal pool meets the hydrology criterion in the 1987 Corps of Engineers Wetlands Delineation Manual and approved supplement in effect at the date the mitigation project was started or bank was established.

(2) Vernal Pool Depth and Side Slope Steepness

(a) Eighty-five (85) percent of the vernal pools will have a mean high water depth of 4 to 11 inches near the end of January. Mean high water can be determined by water depth measurements or upper extent of hydrophytic plants or vernal pool vegetation association. This standard must be met in any of the first 3 years after construction or establishment in which precipitation is within the normal range.

(b) For restored vernal pools, the height of the top of mound to bottom of the vernal pool ranges between 22 and 32 inches and the side slopes for the vernal pool are no steeper than 7:1.

b. Vegetation Standards. The goal is to restore and maintain plant communities dominated by native species typical of least-disturbed reference site vernal pool wetlands and surrounding uplands. The outer boundary of a vernal pool shall be considered the same as the delineated wetland boundary.

(1) Vernal Pool Vegetation

(a) The absolute extent of exposed substrate shall be no more than 75 percent.

(b) Native vernal pool species relative percent cover (excluding substrate) shall be at least 70 percent.

(c) Non-native invasive species relative percent plant cover shall be no more than 15 percent.

(d) At least 15 native vernal pool species must be present in existing vernal pools designated for protection and management and at least 10 native vernal pool species must be present in restored and managed vernal pools. These species counts are to be evaluated in the same sample of plots needed to meet the statistical confidence levels described in Section 8 (Monitoring Requirements).

(2) Upland (Mound) Vegetation

(a) Native species relative percent plant cover shall be at least 25 percent.

(b) Medusahead (*Taeniatherum caput-medusae*) relative percent cover shall be no more than 25 percent.

(c) Non-native invasive species (other than Medusahead) total relative percent plant cover shall be no more than 25 percent.

(d) At least 20 native upland herbaceous species must be present (these species counts are to be evaluated in the same sample of plots needed to meet the statistical confidence intervals described in the Monitoring section).

(e) Less than five percent relative plant cover shall be comprised of woody species other than oak and/or chaparral.

(f) For areas dominated by chaparral[2] or oak at the beginning of the mitigation project, the relative cover of chaparral and/or stem count of oak shall be within 20 percent of the baseline amount at the end of the monitoring period unless conditions exist outside the control of the applicant as agreed to by the Corps in consultation with DSL and USFWS.

c. Federally Listed Species. The goal is to sustain or increase local populations of listed and rare species. USFWS will be reviewing mitigation site monitoring reports and will determine if the sites are complying with the terms and conditions of the 2011 biological opinion.

(1) Vernal Pool Fairy Shrimp Standards. Long-term management of mitigation projects and conservation sites must result in improved conditions for and occupancy by vernal pool fairy shrimp. The standards for vernal pool fairy shrimp occupancy must be satisfied within 5 years of the establishment of the mitigation project or conservation bank.

(a) Occupancy by vernal pool fairy shrimp must be increased to and maintained above 20 percent if a lower baseline level of occupancy exists at the time of establishment of the mitigation project or conservation bank.

(b) Occupancy by vernal pool fairy shrimp must be increased and maintained at an increased level if occupancy at the time of establishment of the mitigation project or conservation bank is already at 20 to 30 percent.

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[2] Chaparral is defined as a native shrub community such as buckbrush (Ceanothus cunneatus) and may contain manzanita, native cherry, and madrone.

(c) Occupancy by vernal pool fairy shrimp must be maintained at the baseline level at the time of establishment of the mitigation project or conservation bank or improved if the baseline level of occupancy is 30 percent or greater.

(d) Occupancy by vernal pool fairy shrimp will not fall below five percent of the performance standard occupancy level applicable to a mitigation project or conservation bank (or to less than the natural range of variability associated with that site if the range is greater than 5 percent).

(2) Cook's Desert parsely (*Lomatium cookii*) and Meadowfoam (*Limnanthes floccosa* ssp. *grandiflora*) standards are as follows:

(a) Cook's Desert parsely and Meadowfoam populations must be maintained within the natural range of variation or increased. For sites already supporting this species at startup, occupancy will not fall below 5 percent of the established baseline level. The baseline level is the average number of individual plants observed in the first five non-drought years of surveys.

(b) For sites where these plants are to be re-introduced, establishment will be considered successful when 200 plants are present in each of 3 consecutive non-drought years, without re-planting.

8. MONITORING REQUIRMENTS. Annual monitoring will occur for a minimum of five years after the completion of the initial restoration phase of the project or after approval (start-up) of protection projects and will continue until all performance standards are met for 3 consecutive non-drought years. Monitoring site visits will be completed as necessary to evaluate the success of the project and identify corrective measures necessary to meet performance criteria to be attained by the end of the post-construction maintenance and monitoring period.

If at least five years of monitoring has occurred and the mitigation site has met standards for 3 consecutive non-drought years, the Corps will release the mitigation provider from further monitoring. Additional monitoring, however, may be required by the USFWS under the biological opinion issued January 25, 2011 (FWS Reference Number 13420-2011-F-0064).

a. Hydrology and Topography. Hydrologic monitoring is conducted to determine whether depth and extent of vernal pool inundation is adequate to support typical vernal pool species, and to verify whether wetland acreage targets have been met.

(1) A wetland delineation shall be conducted during the spring of a year of dry or normal precipitation, sometime during the first 5 years after restoration work. The wetland delineation shall comply with the 1987 Corps of Engineers Wetlands Delineation Manual and Arid West Regional Supplement.

(2) Ground photographs of the vernal pools at the site will be taken twice annually, once during the peak period of inundation (January) and once during vernal pool flowering period

(April through June). The photos must be taken from at least five permanently marked and mapped photo-points to show representative portions of the mitigation site.

(3) Pool depth shall be measured near the end of January during each year for the first 3 years for which total precipitation for the water year up to the date of sampling is within normal range as defined in the delineation manual supplement. For Medford, this range is between 5.1 and 11.7 inches total precipitation between October 1 and January 30. The pools to be measured will be selected from a sample grid or transect lines so that the sample is unbiased, and the number of samples will be sufficient to demonstrate 80% confidence level.

(4) Pool side slope steepness shall be evaluated using at least 3 cross-section transects of the surveyed, as-built grading figure for restoration sites. The elevation contours in the as-built must be accurate to 6 inches or less.

b. Vegetation and Substrate

(1) Vegetation monitoring of vernal pools and uplands shall be conducted each spring during peak flowering periods (typically early May). Timing of surveys may be adjusted according to yearly climatic conditions; repeat visits may be needed to confirm identification of all plant species.

(2) Point intercept or quadrat sampling methods on a grid or transect lines may be used to collect cover data but once one or the other method is selected and employed, it shall be consistently used throughout the monitoring period. For sites containing tree canopy, sample plots of at least 30 feet radius or equivalent area shall be permanently marked (center point) and all trees greater than 1 inch dbh counted. All vegetation and substrate sampling shall be unbiased, representative of the study area, and be sufficient to estimate cover with 80% confidence intervals. Sampling locations shall be marked in the field or re-locatable by GPS so that data and results will be repeatable by a 3rd party verifier.

(3) Vegetation will be sampled to acquire the following data at sample plots or points:

(a) Relative percent cover of vegetation (identify to species all vascular plant species that have 1 percent or greater cover within the sample area).

(b) Percent cover of exposed substrate and the nature of disturbance causing it to be bare (inundation, livestock, rodent activity, etc).

(c) Relative percent cover of native, non-native, or non-native invasive plant species.

(d) Relative percent cover of thatch (dead vegetation), and cover of cryptobiotic soil crust.

c. Fairy Shrimp Sampling

(1) Except as otherwise approved by the USFWS, the sampling for fairy shrimp will be conducted consistent with vernal pool fairy shrimp survey and sampling procedures described at:

http://www.fws.gov/oregonfwo/FieldOffices/Roseburg/Documents/Guidance-vernalpool-June08.pdf.

(2) Sampling for the presence of fairy shrimp will be conducted after the restoration phase as part of a monitoring program. This sampling will be conducted to recognized standards by a qualified individual and reported to the USFWS.

9. MONITORING REPORTS. The monitoring report shall comply with Regulatory Guidance Letter 08-03 (Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment, and/or Enhancement of Aquatic Resources), dated 10 October 2008. This guidance letter can be obtained at http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl08_03.pdf. Permittees should also review the USFWS programmatical biological opinion (reference number 13420-2011-F-0064) and DSL's General Permit for Vernal Pool Wetlands in Jackson County, Oregon to make sure monitoring report information satisfies the requirements of those agencies as well.

a. The monitoring reports shall be compiled annually and provided to the Corps by December 31st. The report shall contain sufficient information to document whether the mitigation project is meeting the performance standards outlined in Section 7 and whether monitoring protocols described in Section 8 have been followed. As-built drawings shall be included in reports following any year where earthwork has been conducted. Where the mitigation project is not meeting performance standards, the monitoring report shall include a proposed adaptive management plan.

b. The Corps will review results from the monitoring data submitted in conjunction with annual site inspections, and supplement that information with other available data and information sources to make decisions regarding the need for remedial actions.

10. GENERAL PERMIT CONDITIONS.

a. Cultural Resources and Human Burials-Inadvertent Discovery Plan: Permittees shall immediately cease all ground disturbing activities and notify the Portland District Regulatory Branch if at any time during the course of the work authorized, human burials, cultural items, or historic properties, as identified by the National Historic Preservation Act and Native American Graves and Repatriation Act, are discovered and/or may be affected. The Permittee shall follow the procedures outlined below:

(1) Immediately cease all ground disturbing activities.

(2) Notify the Portland District Regulatory Branch. Notification shall be made by fax (503-808-4375) as soon as possible following discovery but in no case later than 24 hours. The fax shall clearly specify the purpose is to report a cultural resource discovery.

(3) Follow up the fax notification by contacting the Corps representative (by email and telephone) identified in the permit letter.

(4) Notify the Oregon State Historic Preservation Office (503-986-0674).

Failure to stop work immediately and until such time as the Corps has coordinated with all appropriate agencies and complied with the provisions of 33 CFR 325, Appendix C, the National Historic Preservation Act, Native American Graves Protection and Repatriation Act and other pertinent regulations, could result in violation of state and federal laws. Violators are subject to civil and criminal penalties.

b. Tribal Rights: No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

c. Endangered Species: This RGP does not authorize you to take an endangered or threatened species. In order to legally take a listed species, permittees must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a biological opinion (BiOp) under ESA Section 7, with "incidental take" provisions with which the permittee must comply). Authorization under this RGP is conditional upon compliance with all of the mandatory terms and conditions associated with incidental take, which are incorporated by reference in this RGP. Failure to comply with the terms and conditions associated with incidental take of the BiOp, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with the RGP.

(1) The U.S. Fish and Wildlife Service issued the Programmatic Formal Consultation on the Vernal Pool Conservation Strategy for Jackson County, Oregon (USFWS file #13420-2011-F-0064, dated January 26, 2011), amended by letter dated December 29, 2015. This BiOp contains mandatory terms and conditions to implement the reasonable and prudent measures associated with "incidental take" for the vernal pool fairy shrimp (*Branchinecta lynchi*), Cook's Lomatium (*Lomatium cookii*), and large-flowered woolly meadowfoam (*Limananthes flocossa ssp. grandiflora*).

It should be noted that the USFWS programmatic biological opinion does not authorize the loss of any of the 13 currently known Cook's Lomatium (*Lomatium cookii*) populations, or the 23 currently known large-flowered woolly meadowfoam populations (*Limnanthes flocossa ssp. Grandiflora*), or subsequently discovered populations of these species.

(2) For NMFS listed species, the Corps will make project-specific effects determinations and consult with the Service as appropriate.

d. Water Quality: All activities authorized under this RGP that result in a discharge of dredged or fill material must receive project-specific Water Quality Certification from the

Oregon Department of Environmental Quality for the Department of the Army authorization to be valid. All terms and conditions of the DEQ 401 Water Quality Certification will become terms and conditions of the Department of the Army authorization.

e. Clean Fill: The permittee shall ensure the fill material does not contain unsuitable materials (e.g. trash, debris, etc.).

f. Fills Within 100-Year Floodplains: The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

g. Inspection of the Project Site: The permittee shall allow representatives of the Corps to inspect the authorized activity to confirm compliance with the general permit terms and conditions. A request for access to the site will normally be made sufficiently in advance to allow a property owner or representative to be on site with the agency representative making the inspection.

11. LIMITS OF THIS AUTHORIZATION.

a. This general permit does not obviate the need to obtain other Federal, state or local authorizations required by law.

b. This general permit does not grant any property rights or exclusive privileges.

c. This general permit does not authorize any injury to the property or rights of others.

d. This general permit does not authorize interference with any existing or proposed Federal project.

12. LIMITS OF FEDERAL LIABILITY.

a. In issuing this permit, the Federal Government does not assume any liability for the following:

(1) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

(2) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

(3) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

(4) Design or construction deficiencies associated with the permitted work.

(5) Damage claims associated with any future modification, suspension, or revocation of this permit.

13. REEVALUATION OF PERMIT DECISION: The District Engineer may reevaluate this general permit at any time, and, if appropriate, suspend, modify, or revoke this permit as provided in 33 CFR 325.7. The District Engineer may also suspend, modify, or revoke authorization under this general permit for any specific geographic area, class of activities, or class of waters within the state of Oregon.

a. The District Engineer may assert discretionary authority by modifying, suspending, or revoking RGP authorization for a specific activity whenever he determines sufficient concerns for the environment or any other factor of the public interest so requires. Whenever the District Engineer determines a proposed specific activity would have more than minimal individual or cumulative adverse effects on the environment or otherwise may be contrary to the public interest, he must either modify the RGP authorization to reduce or eliminate the adverse impacts or notify the prospective permittee that the proposed activity is not authorized by the RGP and provide instructions on how to seek authorization under an individual permit.

b. This general permit will be reviewed on an annual basis to determine whether the projects authorized by this general permit result in no more than minimal effects, both individually and cumulatively, and to ensure that the terms and conditions of this permit are being observed. The District Engineer will invite the participation of other interested federal and state agencies in this review. If this review concludes that changes in permit terms or conditions are warranted, modification of the permit will be proposed as provided in 33 CFR 325.7, including public notice and opportunity for comment.

c. Activities authorized under this general permit that are under construction or under contract for construction in reliance upon this authorization will remain authorized provided the activity is completed within 12 months of the date of this general permit's expiration, modification or revocation, unless the District Engineer has exercised his discretionary authority to modify, suspend, or revoke the authorization of a specific project in accordance with Corps regulations.

14. REFERENCES.

a. U.S. Army Corps of Engineers (Corps). 1987. Corps of Engineers Wetlands Delineation Manual. Vicksburg, Mississippi.

b. Corps. 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0). Vicksburg, Mississippi.

c. U.S. Fish and Wildlife Service (USFWS). 2005. Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon. Portland, Oregon.

d. USFWS. 2008. Guidance to Assist in the Assessment of, and Conservation Efforts for, Vernal Pool Systems on the Agate Desert, Jackson County, Oregon. Roseburg, Oregon.

e. USFWS. 2011. Programmatic Formal Consultation on the U.S. Fish and Wildlife Service's Vernal Pool Conservation Strategy for Jackson County, Oregon. Portland, Oregon.

15. EXPIRATION OF THIS RGP. This general permit will expire on January 1, 2021 or when a combined total of 60 acres of vernal pool wetlands or other associated waters of the U.S. (up to 300 acres of vernal pool habitat complex) have been impacted, whichever occurs first. This permit may be extended beyond these limitations if the inter-agency team determines that doing so will benefit the long-term conservation of vernal pool wetlands, species, and associated resources.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Jose L. Aguilar
Colonel, Corps of Engineers
District Commander

20160307
(Date)