

**DEPARTMENT OF THE ARMY PERMIT**  
**REGIONAL GENERAL PERMIT (RGP)**  
**FOR**  
**ODOT BRIDGE REPAIR AND REPLACEMENT**

**PERMITTEE:** Oregon Department of Transportation (ODOT)  
**PERMIT NO.:** 200400035  
**EFFECTIVE DATE:** July 29, 2004  
**EXPIRATION DATE:** July 29, 2009  
**ISSUING OFFICE:** U.S. Army Corps of Engineers, Portland District (Corps)

This regional general permit (RGP) authorizes work in waters of the U.S. within the State of Oregon that would cause no more than minimal adverse environmental effects, individually and cumulatively, subject to the terms, conditions, and limitations contained herein. This RGP is issued upon the recommendation of the Chief of Engineers as provided by 33 CFR 235.5(c)(3), pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act (RHA) of 1899 (33 U.S.C. 403), as amended.

Under Section 9 of the RHA, the U.S. Coast Guard has authority over the construction, operation, and maintenance of bridge structures in navigable waters of the U.S. Bridges are only subject to Section 404 Corps authority and are not regulated by the Corps under Section 10. For the purposes of RHA, a bridge is the structure itself together with its approaches, fenders, pier protection systems, appurtenances, and foundations, if any. Other structures or activities related to a bridge project in navigable waters of the U.S., such as culvert replacement or bank stabilization from a road re-alignment, are still regulated by the Corps under Section 10.

**ACTIVITIES AUTHORIZED BY THIS GENERAL PERMIT**

The RGP authorizes replacement and repair activities for bridges in ODOT's OTIA III Statewide Bridge Delivery Program (Bridge Program) meeting the attached Bridge Program Performance Standards (Enclosure 1) and RGP terms and conditions. This RGP does not authorize new permanent bridge spans where one does not already exist (alignment shifts acceptable). Activities related or appurtenant to the actual replacement or repair of a bridge (see list of activities below) are authorized only if impacts to "waters of the U.S." associated with those activities are limited to the geographic footprint of the construction work required to complete the bridge repair or replacement. The following activities are considered related and appurtenant for RGP purposes provided they meet the condition underlined above:

- Widening shoulder for new roadside embankment, curbs, trails, sidewalks and rail crossings;
- Widening road for additional passing lanes, turn lanes and refuges and travel lanes;
- Widening, realigning or removing existing railroad beds or existing roads;
- Widening<sup>1</sup>, realigning, removing or replacing existing bridges or similar structures;
- Widening, realigning or removing existing bicycle, pedestrian or other lanes or trails;

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<sup>1</sup> Proposals will not result in an increase in bridge capacities, despite the fact that some bridges are being widened. Widening will occur for safety and to accommodate future growth (new bridges are anticipated to last 75 to 100 years); however bridges will be striped for existing capacity and approaches will remain at existing capacities. Accordingly, no potential for induced development or increased impacts from roadway operations is anticipated.

- Constructing new bicycle, pedestrian or other lanes or trails;
- Replacement of culverts or similar water conveyance structures along roads and trails that extend beyond the existing road prism;
- Construction of new culverts (e.g. temporary crossing access, bridge re-alignments facilitating a culvert crossing); extension of existing culverts beyond the existing road prism;
- Streambank stabilization associated with projects listed above;
- Hydraulic scour protection associated with bridges and similar structures including but not limited to: construction of a new trench and stone embankment; construction of new bridge footings; new riprap placement to stabilize a transportation structure foundation;
- Temporary structures and fill (e.g. work bridges, detour bridges, and structures necessary for temporary access roads);
- Staging areas for equipment that will be restored at time of project completion;
- Test holes, borings, and similar activities associated with transportation structure planning and design;
- An activity that is incidental to the project necessary to provide fish passage or needed for the structural integrity of the project (e.g. structural components needed to stabilize a stream channel, when consistent with Bridge Program Performance Standards);
- Other activities associated with bridge repair or replacement (e.g. temporary access, dewatering, and flow diversion; relocation of utilities spanning original bridge structure).

#### **ACTIVITIES NOT AUTHORIZED BY THIS GENERAL PERMIT**

- Activities affecting Federally protected species / habitats not covered in the joint RGP Biological Opinion (BO).
- Activities occurring in the Oregon Territorial Sea or areas within the "Ocean Shore" subject to the jurisdiction of the Oregon parks and Recreation Department. "Ocean Shore" is defined as the areas submerged by daily tides and the adjacent dry sands beach up to the beach zone line or vegetation line.
- Activities occurring on Tribal lands. The RGP does not have Section 401 water quality certification for bridge projects on Tribal lands.

#### **THRESHOLDS**

Projects that qualify must have no more than 1.0 acre of total (permanent and temporary) fill in waters of the U.S. per single and complete project. The RGP may authorize, under limited circumstances, projects having more than 0.5 acre of permanent fill only if approved on a site-specific basis by the Corps. In circumstances where two bridges cross the same feature in the same location, and are repaired or replaced concurrently, the two structures are considered one project. For the purposes of determining project fill thresholds and compensatory mitigation requirements, fill is considered temporary in waters of the U.S. when its impacts do not result in the permanent loss of functions or area and are rectified within twelve months of project completion (completion of discharge of dredged or fill material) in waters of the U.S.

#### **LOCATIONS**

The bridges included in the Bridge Program are located throughout the state of Oregon (see Appendix A, Enclosure 2). Construction timeline is organized by stage where stage designations generally refer to when the various batches of bridge projects will enter the construction phase. The bridge list is dynamic, with listing and staging designations subject to change during the life of the Bridge Program. ODOT will provide specific bridge location information as part of the RGP notification and reporting process.

## COMPENSATORY MITIGATION

The Bridge Program Performance Standards were developed to drive impact avoidance and minimization. Many of these performance standards are incorporated into RGP scope of work and conditions. For unavoidable impacts to waters of the U.S., ODOT will use a Comprehensive Mitigation / Conservation Strategy (CMCS) to provide integrated resource compensation benefits. The strategy addresses on-site impacts; as well as on- and off-site mitigation measures; and ties together resource management objectives for wetlands, waters, wildlife species and habitats, and Federally protected species and habitats. The CMCS is a collaborative effort between ODOT, private consultants, Northwest Habitat Institute, and Federal Highways Administration (FHWA), in conjunction with federal and Oregon state resource and regulatory agency representatives, including the Corps.

The CMCS focuses on ecosystem services and resource function and value. The CMCS will identify regional ecological priorities for the program and focus impact avoidance, minimization, and mitigation/conservation efforts toward identified priorities. The CMCS divides Oregon into "Ecoprovinces" (defined at the 3<sup>rd</sup> field Hydrologic Unit Code (HUC)) to identify ecological priorities within the context of the surrounding landscape. Ecoprovince priorities can serve as a driving force for mitigation efforts rather than strict, in-kind mitigation, if priorities are determined to be of greater significance in the Ecoprovince.

The CMCS is an on-going process and the following actions will be collaboratively developed and finalized for the RGP program and regional and individual mitigation sites, subject to Corps approval prior to final implementation:

- Develop regional ecological priorities to target and benefit appropriate resources.
- Identify potential mitigation sites for consideration in the CMCS.
- Model potential mitigation sites for current and potential value based on potential mitigation improvements.
- Develop an impact assessment and mitigation / conservation credit system.
- Design conceptual compensatory mitigation plans for approval by appropriate resource agencies. These sites may be in the form of regional mitigation sites, existing banks, new ODOT joint mitigation/conservations banks, or a variety of other instruments. Once agency feedback is obtained, final mitigation plans will be prepared for approval, including compensatory mitigation criteria (function and value based).
- Develop an Adaptive Management Program to provide a method for documenting monitoring results and maintenance activities, while providing a decision-making framework for assessing success and dealing with change. An adaptive program allows resource site managers flexibility to deal with unforeseen circumstances.
- Develop financial assurances for mitigation sites.

Conceptual regional CMCS plans for agency reviews are anticipated in October 2004 for Bridge Program Stages 1A and 2, with subsequent stages to follow. ODOT is currently developing a statewide umbrella mitigation program proposal for Bridge Program and other future ODOT project uses, incorporating regional CMCS mitigation sites as bank sites.

## PROCEDURES FOR AUTHORIZATION OF INDIVIDUAL PROJECTS

**Notification:** ODOT must notify the Corps of all individual projects for authorization under the RGP. ODOT will provide Notifications to the Corps by:

- Electronic mail (e-mail) to [CENWP.ODOT.RGP@usace.army.mil](mailto:CENWP.ODOT.RGP@usace.army.mil) with "Bridge RGP Category (1, 2, or 3) Notification" in the Subject Line of the e-mail; *or*
- If e-mail is not a viable option, then postal mail to **U.S. Army Corps of Engineers, CENWP-OP-G (ATTN: ODOT BRIDGE RGP), P.O. Box 2946, Portland, Oregon 97208-2946**. For mailed notifications, the top of the submittal or cover letter should clearly identify the submittal as a Bridge RGP Notification with its Notification Category (i.e., "Bridge RGP Category (1, 2, or 3) Notification").

ODOT will copy Category 2 and 3 Notifications to the following reviewing agencies:

- Oregon Department of Environmental Quality (DEQ),

- Environmental Protection Agency (EPA),
- National Marine Fisheries Service (NOAA Fisheries),
- U.S. Fish and Wildlife Service (USFWS),
- Oregon State Historic Preservation Office (SHPO), and
- \*Oregon Department of Land Conservation Development (DLCD)

\*DLCD shall only receive Notifications for projects located in the state's coastal zone as defined by Oregon's Coastal Management Program.

**Notification Categories:** The RGP has three Notification Categories:

Category	Expected Environmental Impacts	Corps Evaluation Process
1	Minimal	60-day post construction reporting
2	Minimal with programmatic mitigation/agency coverages	30-day review - work may proceed if no objection
3	Additional assessment necessary	Individual approval required prior to construction

**Category 1: Within 60 days of completion of the discharge of dredged or fill material in waters of the U.S.,** ODOT must submit a post-construction report of completed activities. To qualify for Category 1 Notification, a project **must meet all situations** listed below:

- Does not affect species or habitat protected under the Endangered Species Act (ESA), Magnuson-Stevens Act (MSA), or the Marine Mammal Protection Act (MMPA); **AND**
- Does not affect cultural and historic resources listed or eligible for listing under the National Register of Historic Places (listed or eligible for listing) pursuant to the National Historic Preservation Act (NHPA); **AND**
- Does not affect designated and nominated Wild and Scenic River corridors; **AND**
- Does not have compensatory mitigation requirements; **AND**
- Does not occur in the state's coastal zone; **AND**
- Does not occur in a water of the U.S. within an "area of interest"<sup>2</sup> of the EPA and DEQ.

**Category 2:** ODOT must notify the Corps and reviewing agencies **no later than 30 days prior to actual construction commencement in waters of the U.S.** Work in waters of the U.S. may proceed according to RGP terms and conditions provided the Corps does not object to the proposed project within 30 days from the date the Corps receives the Category 2 Notification. Category 2 includes only those projects with impacts falling within programmatic thresholds established for the Bridge Program that **do not require additional approval or assessment** from the Corps or reviewing agencies. The Corps will review a Category 2 Notification for consistency with any applicable programmatic approvals for the bridge project, such as:

- Programmatic coverage under the RGP and BO.
- 1) A finalized resource-specific NHPA Section 106 Concurrence; and/or 2) coverage under a prior-submitted<sup>3</sup>,

<sup>2</sup> "Area of interest" is pursuant to a National Priorities Listing, per the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, commonly known as "Superfund") as amended (42 U.S.C. 9601 et. Seq.); the Resource Conservation and Recovery Act (RCRA) of 1978 as amended (42 U.S.C. 6901 et. Seq.); the Federal Water Pollution Control Act (FWPCA) as amended (33 U.S.C. 1251 et. Seq.); and any and all requirements of the State of Oregon under Revised Statutes or Administrative Rules.

<sup>3</sup> "Prior-submitted" means ODOT provided, in advance of the Notification, a copy of a finalized agreement to the Corps for the RGP administrative record.

programmatic NHPA Section 106 Memorandum of Agreement (MOA) and/or Concurrence for effects to known listed or eligible for listing cultural and/or historic properties.

- 1) A project-specific, non-conditioned Section 7(a) written determination for effects to a designated or nominated Wild and Scenic River corridor; or 2) coverage under a prior-submitted, programmatic MOA/Section 7(a) written determination for effects to designated or nominated Wild and Scenic River corridors.
- Compensatory mitigation that IS a Federally approved mitigation bank or a Corps-approved ODOT regional mitigation site.
- Occurrence in the state's coastal zone.

**Category 3:** ODOT will notify the Corps and reviewing agencies prior to commencing work in waters of the U.S. **Work in waters of the U.S. shall not proceed until a Notice-to-Proceed is obtained from the Corps.** A Notice-to-Proceed may include additional project-specific special conditions after evaluation of the Notification. ODOT must notify the Corps under a Category 3 Notification, if a project **includes at least one situation** listed below:

- A bridge proposal with greater than 0.5 acre of permanent impacts to waters of the U.S.
- A variance request under the BO or the RGP, an in-water work window extension request, or request for Corps approval when triggered by a Performance Standard or RGP condition.
- 1) Effects to cultural and/or historic resources listed or eligible for listing without a finalized NHPA Section 106 Concurrence or MOA; and/or 2) A project-specific, conditioned NHPA Section 106 MOA for cultural and/or historic resources listed or eligible for listing.
- 1) Effects to a designated or nominated Wild and Scenic River corridor without a finalized Section 7(a) written determination; or 2) A project-specific, conditioned Section 7(a) written determination for designated or nominated Wild and Scenic River corridors.
- Compensatory mitigation that does NOT utilize a Federally approved mitigation bank or a Corps-approved ODOT mitigation site.
- Occurrence in a water of the U.S. within an "area of interest" of the EPA and DEQ.

### **Notification Reporting Requirements**

**For a complete Notification, all Notifications must have the following information:**

1. Bridge identification (e.g., ODOT bridge number, highway, crossing)
2. Bridge / project location (county, city, legal description, latitude/longitude coordinates, Ecoprovince, waterway/drainage, and if applicable, species range)
3. Project schedule (construction start and end dates, preferred in-water work windows, and timing of environmentally sensitive work activities)
4. Project team contact information (ODOT, Bridge Program Management Firm (BPM), and contractor contacts)
5. Photo documentation of habitat/waters conditions within the project area. Label each photo with date, time, project name, photographer's name, and subject comment.
6. List of project actions
7. List of applicable performance standards and documentation demonstrating compliance with applicable performance standards
8. Wetland delineation and location of Ordinary High Water Mark (OHWM), if applicable.

**A Category 1 Notification (Post-construction Report) must also include:**

1. 8.5" X 11" Drawings of Completed Work.
  - a. Completed work in waters of the U.S. including a map of project area with water of the U.S. impact clearly identified, project overview and cross-section view of new structures/fill in waters of the U.S., locations of temporary access areas, staging area, and other areas of disturbance in waters of the U.S.
  - b. Restored areas including planted species list and density, or if applicable, a planting plan for the restored area with a species list, map, planting density, and site restoration success criteria / timeline.
2. Demonstration the activity does not affect species or habitat protected under the ESA, MSA, or the MMPA; cultural and historic resources listed or eligible for listing; and designated and nominated Wild and Scenic river corridors.
3. Justification why compensatory mitigation is not required.
4. Statement/demonstration activity does not occur in the state's coastal zone or in a water of the U.S. within an "area of interest" of the EPA and DEQ.

**A Category 2 Notification must also include:**

1. 8.5" X 11" project plans / figures. Map of project area with water of the U.S. impact clearly identified, project overview design plan and cross-section view of proposed new structures/fill in waters of the U.S., locations of temporary access areas, staging area, and other areas of disturbance in waters of the U.S., and planting plans (species list, map, plant density, site restoration success criteria / timeline) for restored areas).
2. BO. Statement/demonstration activity qualifies under the RGP BO, if applicable.
3. Known cultural or historic resources listed or eligible for listing. A finalized resource-specific NHPA Section 106 Concurrence; and/or a statement/demonstration the project is covered under a prior-submitted, programmatic NHPA Section 106 MOA and/or Concurrence, if applicable.
4. Effects to designated or nominated Wild and Scenic River corridors. A Section 7(a) written determination or a statement/demonstration the project is covered under a prior-submitted, programmatic MOA/Section 7(a) written determination, if applicable.
5. Compensatory mitigation proposal. If compensatory mitigation is not proposed, then justification why compensatory mitigation is not required.
6. Coastal Zone. Statement the project occurs in the state's coastal zone and demonstration the project is consistent with the applicable local comprehensive plan and land use regulations implementing the Statewide Planning Goals, if applicable.
7. Superfund. Statement the project does not occur in a water of the U.S. within an "area of interest" of the EPA and DEQ.

**A Category 3 Notification must also include:**

1. 8.5" X 11" project plans / figures. Map of project area with water of the U.S. impact clearly identified, project overview design plan and cross-section view of proposed new structures/fill in waters of the U.S., locations of temporary access areas, staging area, and other areas of disturbance in waters of the U.S., and planting plans (species list, map, plant density, site restoration success criteria / timeline) for restored areas).
2. Approval requests, if applicable.
  - a. Greater than 0.5 acre of permanent impacts to waters of the U.S.
  - b. Variance request under the BO.
  - c. In-water work window extension request.
  - d. Approval request triggered by a Performance Standard or RGP condition (including variances).
  - e. Occurrence in a water of the U.S. within an "area of interest" of the EPA and DEQ.
3. BO. Statement/demonstration the project qualifies under the BO, if applicable.
4. Effects to cultural or historic resources listed or eligible for listing. Documentation indicating SHPO consultation began; a project-specific, NHPA Section 106 MOA and/or Concurrence; or demonstration the project is covered under a prior-submitted, programmatic NHPA Section 106 MOA and/or Concurrence, if applicable.

5. Effects to designated or nominated Wild and Scenic River corridors. Documentation indicating Federal River Managing Agency consultation began, a Section 7(a) written determination, or a statement/demonstration the project is covered under a prior-submitted, programmatic MOA/Section 7(a) written determination, if applicable.
6. Compensatory mitigation proposal. If compensatory mitigation is not proposed, then justification why compensatory mitigation is not required.
7. Coastal Zone. Statement that the project occurs in the state's coastal zone and demonstration the project is consistent with the applicable local comprehensive plan and land use regulations implementing the Statewide Planning Goals, if applicable.

### **Variations and Project Changes**

Variations: A variance request allows flexibility to minimize the need for reinitiation of formal ESA consultation. These include certain bridge design or construction elements and activities for which the Corps, NOAA Fisheries, and USFWS have recognized the potential for implementation of alternate methods which may comply with the intent of a specific Performance Standard but not the description in the RGP or BO. For a complete description of appropriate variations and processes, see Section 2.5 of Enclosure 2.

Project Changes/Modifications: For RGP purposes, a project change/modification is a change in construction footprint in waters of the U.S. or proposed action in waters of the U.S.

Foreseen changes: If a bridge proposal is modified after RGP Notification submittal or after RGP authorization, ODOT must immediately notify the Corps of the change so the Corps can determine if the project still qualifies under the Notification Category and coverage of any programmatic effort (BO, MOAs, etc.). The notification shall include appropriate information to evaluate the new impact, including the Corps ID number, a modification description, waters of the U.S. impact acreage, and additional compensatory mitigation, if necessary. Work may proceed, as modified, once ODOT receives written Corps approval (through e-mail notification or a Notice-to-Proceed, if appropriate). If the project no longer qualifies for the RGP, exceeds BO magnitude or scope of activities, or is likely to exceed BO estimated take, then the project may not proceed, as modified, until approved under other Corps permitting processes and receipt of an individual BO, if necessary.

Unforeseen modifications/changes during construction:

If a bridge project unintentionally changes / comes into non-compliance and has the potential to affect a listed species or designated critical habitat, ODOT must immediately notify the Corps, DEQ, FHWA, USFWS, and NOAA Fisheries of the situation and provide a remediation proposal to bring the project back into compliance. The agencies will determine if the completed work and the proposed remedial work are still within the RGP's scope and the scope of effects, amount, and extent of take associated with the BO. If so, and once remediation is approved by the agencies, then ODOT may immediately proceed with the remedial work. If take occurs (or may occur) and exceeds the BO's scope of effects or amount and extent of take, then an individual consultation from the appropriate agency (NOAA Fisheries and/or USFWS) is required prior to, or concurrent with, remediation. The agencies will determine the appropriate consultation process on a project basis.

If a bridge project unintentionally changes / comes into non-compliance and does not have the potential to affect a listed species or designated critical habitat, ODOT may immediately proceed with rectifying the situation to minimize effects to waters of the U.S., provided the remedial work does not result in a discharge of dredged or fill material greater than approved under the RGP. ODOT shall immediately report the remedial work to the Corps and DEQ. The Corps will determine appropriate compliance actions upon report receipt.

### **GENERAL CONDITIONS**

1. ODOT must construct each individual project in compliance with the Bridge Program Performance Standards.
2. ODOT must maintain individual projects authorized by this RGP in good condition and in conformance with the terms and conditions of this RGP, including all Bridge Program Performance Standards. ODOT is not relieved of this requirement if ODOT abandons the individual projects, although ODOT may make a good faith transfer to a third party

in compliance with Condition 2 below. Should ODOT wish to cease to maintain individual projects or should ODOT desire to abandon them without a good faith transfer, ODOT must obtain a modification of the individual authorization from the Corps, which may require restoration of the area.

3. If ODOT sells properties associated with this RGP, ODOT must transfer the individual authorization(s) to the new owner(s) and forward evidence (i.e., written documentation of new owner accepting transferred authorization) to the Corps to validate the transfer of the authorization(s).
4. ODOT must comply with the conditions specified in the 401 certification as special conditions to this RGP. For convenience, a copy of the certification is attached (Enclosure 3).
5. ODOT must comply with the condition specified in the Coastal Zone Management Act of 1972(CZM) federal consistency determination dated July 2, 2004 as a special condition to the RGP:

Authorization for a project in Oregon's coastal zone under the ODOT Bridge Repair and Replacement Regional General Permit is valid only if the proposed project is consistent with, or not subject to, the applicable "acknowledged" (i.e. Land Conservation and Development Commission (LCDC) approved) local comprehensive plan and land use regulations. Permits or other approvals must be obtained, when required, from the applicable local government before work is initiated under the Regional General Permit.

6. ODOT must allow representatives from the Corps to inspect the authorized individual activities at any time deemed necessary to ensure that they are accomplished in accordance with the terms and conditions of the RGP.
7. The following condition is a part of all Department of the Army permits that provide authorization under Section 10 of the Rivers and Harbors Act, regardless whether the permit provides such authorization under Section 10 alone, or in combination with authorization under other laws:

The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the U.S Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

8. Endangered and Threatened Species, Essential Fish Habitat (EFH), and Marine Mammals. This RGP does not authorize ODOT to take an endangered or threatened species. To legally take a listed species, ODOT must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which ODOT must comply). The enclosed joint-agency programmatic BO (NOAA Fisheries NWR 2004/00209 / USFWS file #8330.02233 (04)) prepared by the NOAA Fisheries and USFWS and dated June 28, 2004, contains mandatory terms and conditions to implement the reasonable and prudent measures associated with "incidental take" (Enclosure 2). Compliance with these conditions also satisfies the mandate to address the Marine Mammal Protection Act and EFH under Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act.

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 BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with the RGP.

9. If previously unknown federally listed species are encountered during the project, ODOT shall immediately cease work and contact the Corps.

10. Cultural and Historic Resources. The Federal Highway Administration (FHWA) is the lead Federal agency for compliance under Federal cultural resources and historic preservation laws and regulations. As the local agent of



FHWA, ODOT is responsible for compliance with the National Historic Preservation Act (NHPA). ODOT will individually review projects to determine if activities may be located on property registered or eligible for registration in the latest published version of the National Register of Historic Places (NRHP). No individual project shall proceed under the RGP until requirements under Federal cultural resources and historic preservation laws and regulations are met. ODOT shall not disturb or destroy known archeological sites unless authorized under a permit issued by the SHPO and/or a SHPO MOA for cultural / historic resources for adverse effects to properties listed or eligible for listing under the NRHP.

Bridge repair or replacement will avoid, or when unavoidable, mitigate, adverse effects to cultural/historic properties in accordance with the NHPA and 36 CFR 800.

- a. Bridge Program RGP Reporting Requirements: ODOT shall provide the Corps a copy of NHPA Section 106 programmatic MOAs regarding effects to cultural and historic resources associated with the Bridge Program. When effects to cultural or historic resources are covered under these agreements, individual bridge projects are not authorized until the Corps receives these agreements. Conditions, if any, of these agreements will be incorporated as RGP conditions.
- b. Individual Project Reporting Requirements: ODOT will provide documentation as part of the RGP Notification process for each bridge of measures taken to avoid or mitigate impacts to cultural and historic resources. ODOT will prepare all documentation provided in the RGP Notification in accordance with standards and requirement provided by the NHPA and 36 CFR 800. In addition, ODOT will maintain all supportive technical and consultation documentation on file at ODOT. All documentation will also include a statement regarding procedures to follow should cultural properties be first discovered during design or construction activities. Additional documentation for the RGP Notification will vary depending on the resources present on site, but may include statements demonstrating:
  - “No Effect” to:
    - Cultural properties (other than historic bridges)
    - Historic bridges (i.e., those over 45 years old determined not potentially eligible for listing on the NRHP in accordance with the “ODOT Programmatic Agreement Among the Federal Highways Administration, Oregon Department of Transportation, the Oregon State Historic Preservation Officer, and the Advisory Council on Historic Reservation Regarding the Implementation of Minor Highway Projects”).
  - “No Adverse Effect” to:
    - Cultural properties determined eligible for listing on the NRHP and that are within the Area of Potential Effect of the bridge.
  - “Adverse Effect” to:
    - Historic bridges determined eligible for listing on the NRHP, will be replaced, and for which mitigation measures will be stipulated through an MOA between ODOT, FHWA, and SHPO for Historic Bridges Unavoidably and Adversely Affected by the OTIA III Bridge Replacement Program. As already negotiated with SHPO, mitigation will be largely, if not completely, accommodated through a Historic Slab, Beam, and Girder (SBG) Context Statement, which is completed.
    - Cultural properties determined eligible for listing on the NRHP and for which mitigation measures will be stipulated through either:
      - An MOA identifying measures that will offset unavoidable adverse impacts to a logical series of NRHP-eligible properties.
      - An MOA identifying mitigation measures that will offset unavoidable adverse effects to an individual property.

If these implementation measures are not achieved by the Notification, then provisions of the RGP will not apply.

- c. During Construction: If any previously unknown historic or archeological remains are discovered while accomplishing individual activities authorized by this RGP, ODOT must discontinue work in the area of discovery and immediately notify the Corps of what was found. Required Federal and state coordination must occur to determine if the remains warrant a recovery effort or if the site is eligible for listing in the NRHP. ODOT shall ensure provisions of the NHPA and 36 CFR 800 are satisfied prior to work resumption in the area of discovery.

11. Wild and Scenic Rivers.

- a. RGP Program: ODOT will enter into a programmatic MOA with the Bureau of Land Management and the U.S. Forest Service to develop procedures and performance standards for Bridge Program projects that may affect designated or nominated Wild and Scenic River corridors. ODOT shall provide the Corps a copy of the MOA within 5 days of MOA finalization. Performance Standards of the MOA will be incorporated as conditions of the RGP for projects subject to the Wild and Scenic Rivers Act.
- b. Individual Projects: For projects affecting Wild and Scenic River Corridors or Study Rivers, no activity is authorized under this RGP until a Wild and Scenic Section 7(a) determination from the federal agency designated as the river management agency is provided to the Corps. Any conditions associated with a Wild and Scenic Section 7(a) determination will become conditions of a project's RGP authorization.

12. Superfund Sites. This RGP does not authorize work in a water of the U.S. within an "area of interest" of the Environmental Protection Agency (EPA) and the Oregon Department of Environmental Quality (DEQ) pursuant to a National Priorities Listing, per the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, commonly known as "Superfund") as amended (42 U.S.C. 9601 et. Seq.); the Resource Conservation and Recovery Act (RCRA) of 1978 as amended (42 U.S.C. 6901 et. Seq.); the Federal Water Pollution Control Act (FWPCA) as amended (33 U.S.C. 1251 et. Seq.); and any and all requirements of the State of Oregon under Revised Statutes or Administrative Rules without site-specific approval from the Corps after coordination with the EPA.

13. ODOT shall keep a copy of the Corps approval available at the work site whenever the activity is being conducted.

14. Within 120 days of project completion, ODOT shall provide the Corps as-built drawings of Category 2 and 3 bridge replacement and repair projects.

15. When required by RGP conditions, ODOT shall provide all documents and submittals to the following e-mail address or postal address:

- [susan.m.sturges@usace.army.mil](mailto:susan.m.sturges@usace.army.mil) (or the current ODOT-Corps Liaison e-mail address)
- U.S. Army Corps of Engineers  
CENWP-OP-G (Attn: ODOT-Corps Liaison)  
P.O. Box 2946  
Portland, OR 97208-2946

Submittals shall clearly identify whether the submittal is for an RGP program approval (MOAs, Regional Mitigation Proposals, etc), an individual bridge project approval (finalized documents prior to Notice-to-Proceed authorization), or a mitigation monitoring report for a regional or individual CMCS mitigation site. Submittals tied to a specific bridge project must also include the assigned Corps File Number.

16. ODOT shall ensure all submitted figures and drawings either: 1) if drawn to scale, include graphic (bar) scales, or 2) if not drawn to scale, identify applicable measurements, such as length, width, and depth of fill or structures and distances within or from waters of the U.S.

## PROGRAM CONDITIONS

ODOT shall:

1. Ensure compliance with all performance standards developed for this program.
  - a. Monitor & Reporting. Develop and carry out a monitoring and reporting program to confirm the performance standards are being properly followed and the performance standards are achieving the goals of habitat improvement and avoidance or minimization of adverse effects to the ecosystem.
    - i. Program Elements:
      - (1) Construction Monitoring. Monitor active projects during environmentally sensitive work activities and at a frequency adequate to detect compliance with the appropriate environmental performance standards. Provide environmental monitor with appropriate authority and professional experience to ensure compliance with relevant environmental performance standards and other applicable environmental rules and regulations.
      - (2) Post-Construction Monitoring. Monitor relevant project features to ensure compliance with long-term beneficial effects goals outlined in the biological assessment. Report on success, failures, and remedial actions for site restoration and compensatory mitigation sites. Evaluate achievement of each relevant conservation measure outlined in the environmental performance standards.
      - (3) Annual Program Reporting. Submit an annual monitoring report by February 28 of each year that describes the efforts and actions of the preceding year and the anticipated efforts and actions of the following year. Summarize relevant project reports, such as pre-construction assessment reports, construction and post-construction monitoring reports, fish capture and release effort reports. Include summaries of observed and estimated take and established effects metrics accumulated over the year, including area of riparian disturbance, length of linear streambank disturbance, net fill acreage/volumes in jurisdictional wetlands and other waters of the U.S., net fill removed from the functional floodplain, and net area of impervious surfaces treated for detention and contamination.
      - (4) Annual Program Coordination. Discuss the annual monitoring report with the Services and the appropriate Regulatory Authorities by March 31 of each year. Pursue means of refining and improving program clarity and effectiveness.
    - ii. Report Contents. Include relevant project information in all reports prepared for this program.
      - (1) General Report Contents. Include the following, and other data as appropriate:
        - (a) Bridge identification (e.g., number, highway, crossing)
        - (b) Bridge location (e.g., county, legal description, ecoprovince, species range, drainage)
        - (c) Project schedule (e.g., construction start and end dates, timing of environmentally sensitive work activities)
        - (d) Project team contact information (e.g., ODOT, Bridge Program Management Firm, and contractor contacts)
        - (e) Photo documentation of habitat conditions within the project area. Label each photo with date, time, project name, photographer's name, and subject comment.

- (2) Monitoring Report Contents. Monitoring reports shall be available within 30 days of the monitoring visit and include the following, and other data as appropriate:
  - (a) Site conditions at time of monitoring visit.
  - (b) Evaluation of compliance for each relevant environmental performance standard.
  - (c) Remedial actions suggested and required.
  - (d) Corps-assigned File Number.
- (3) Annual Program Monitoring Report Contents. Include the following, and other data as appropriate:
  - (a) Summary of work completed.
  - (b) Summary of variances requested, denied, and approved.
  - (c) Summary of monitoring dates and efforts.
  - (d) Summary of relevant reports.
  - (e) Comparison of annual observed take and effects metrics to remaining exempted take and effects metrics.
  - (f) Summary of fills/removals within waters of the U.S.
  - (g) Number and location of program bridges in design, construction, or restoration stage.
  - (h) Summary of mitigation/conservation credits/debits created and used that year.
  - (i) Summary of non-compliance situations and actions taken to remediate.
  - (j) Identification of anticipated variances for following year.
  - (k) Recommendations for program improvements.

b. Variance Protocol.

- i. Request a variance for actions not clearly addressed in the environmental performance standards. Requests may be included in the Pre-Construction Assessment (PCA) report (comparable to an RGP Project Notification), as described in the Program Administration Section of the attached BO, or other appropriate means and should include the following:
  - (1) Justification for the proposed variance.
  - (2) Description of additional actions necessary to offset potential effects, as appropriate.
  - (3) Demonstration of how the resulting effects are within the range considered in the biological opinion, if listed or proposed species affected.
  - (4) Reevaluation of take and established effects metrics if different than identified in the PCA, if listed or proposed species affected.
- ii. Variances of the environmental performance standards that result in greater effects or greater take than provided in the biological opinion will not be granted and will require separate take statements.

c. Project Changes. Notify the Corps and reviewing agencies of any significant project changes<sup>4</sup> as

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<sup>4</sup> For purposes of this project, "significant project changes" encompass actions or designs that affect the take statement and include, but are not limited to, design elements or construction activities not described in the project description that result in

soon as possible.

## SITE RESTORATION CONDITIONS

ODOT shall:

1. Renew habitat access, water quality, production of habitat elements, channel conditions, flows, watershed conditions, and other ecosystem processes that form and maintain productive habitats. Prepare and carry out a site restoration plan as necessary to ensure that all habitats and accesses (e.g., streambanks, soils, large woody material, and vegetation) disturbed by the project are cleaned up and restored as follows:
  - a. General Considerations:
    - i. Streambank shaping. Restore damaged streambanks to a natural slope, pattern and profile suitable for establishment of permanent woody vegetation, unless precluded by pre-project conditions (e.g., a natural rock wall).
    - ii. Revegetation. Replant or reseed each area requiring revegetation before the end of the first planting season following construction. Use a diverse assemblage of species native to the project area or region, unless approved in writing by the Corps.
    - iii. Pesticides. No pesticides, including herbicides, will be allowed within 150 feet of waters of the U.S. without Corps approval. Mechanical, hand, or other methods may be used to control weeds and unwanted vegetation.
    - iv. Fertilizer. Do not apply surface fertilizer within 50 feet of any stream channel, unless approved in writing by the Corps.
    - v. Fencing. Install wildlife-friendly fencing as necessary to prevent access to revegetated sites by livestock or unauthorized persons.
    - vi. Source of Materials. Obtain boulders, rock, woody materials and other natural construction materials used for the project outside the bankfull elevation and at least 150 feet from any waters of the U.S., except for native materials obtained from within the project footprint to be stockpiled and reused on site.
      - (1) If possible, leave native materials where they are found.
      - (2) If native materials (e.g., downed wood) are damaged or destroyed, replace them with a functional equivalent during site restoration.
      - (3) Stockpile all large wood<sup>5</sup>, native vegetation, weed-free topsoil, and native channel material displaced by construction for use during site restoration in-channel, in the riparian area, or in adjacent uplands, as appropriate.
  - b. Plan Contents. Include each of the following elements:
    - i. Responsible Party. The name and address of the party(s) responsible for meeting each component of the site restoration requirements, including providing and managing any

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effects not discussed in the biological opinion, changes to the scope or magnitude of project effects that exceed the range of those described in the biological opinion or approved variances, and activities that exceed the quantification or extent of take identified in the project PCA or other appropriate reports. Significant project changes may also include project changes in magnitude appropriate for documentation in the Services' or appropriate Regulatory Authorities' administrative record(s).

<sup>5</sup> For purposes of this project, "large wood" means a tree, log, or rootwad big enough to dissipate stream energy associated with high flows, capture bedload, stabilize streambanks, influence channel characteristics, and otherwise support aquatic habitat function, given the slope and bankfull channel width of the stream in or near which the wood occurs. See, Oregon Department of Forestry and Oregon Department of Fish and Wildlife, *A Guide to Placing Large Wood in Streams*, May 1995 ([www.odf.state.or.us/FP/RefLibrary/LargeWoodPlacemntGuide5-95.doc](http://www.odf.state.or.us/FP/RefLibrary/LargeWoodPlacemntGuide5-95.doc)).

- financial assurances and monitoring necessary to ensure restoration success;
- ii. Baseline Information. Include the location and extent of resources surrounding the restoration site (i.e., historic and existing conditions). This information may be obtained from existing sources (e.g., land use plans, watershed analyses, subbasin plans, and ODOT's Environmental Baseline Reports), where available;
  - iii. Goals and Objectives. Restoration goals and objectives that describe the extent of site restoration necessary to restore lost function, by resource type;
  - iv. Design Criteria. Use these criteria to help design the plan and to assess whether the restoration goal is met. While no single criterion is sufficient to measure success, the intent is that these features should be present within reasonable limits of natural and management variation:
    - (1) Bare soil spaces that approximate the size and dispersal pattern of pre-existing conditions;
    - (2) Soil movement, such as active rills or gullies and soil deposition around plants or in small basins, is absent or slight and local;
    - (3) If areas with past erosion are present, they are completely stabilized and healed;
    - (4) Plant litter is well distributed and effective in protecting the soil with few or no litter dams present;
    - (5) Native woody and herbaceous vegetation, and germination microsites, are present and well distributed across the site;
    - (6) Vegetation structure is resulting in rooting throughout the pre-existing, available soil profile;
    - (7) Plants have normal, vigorous growth form, and a high probability of remaining vigorous, healthy and dominant over undesired competing vegetation;
    - (8) High impact conditions are confined to small areas that are necessary for access or other special management situations;
    - (9) Streambanks have less than 5% exposed soils with margins anchored by deeply rooted vegetation or coarse-grained alluvial debris.
  - v. Work Plan. Develop a work plan with sufficient detail to include a description of the following elements, as applicable:
    - (1) Boundaries for the restoration area;
    - (2) Restoration methods, timing, and sequence;
    - (3) Irrigation plan, including water supply source, if necessary;
    - (4) Woody native vegetation appropriate to the restoration site. This must be a diverse assemblage of species that are native to the project area or region, including grasses;
    - (5) List forbs, shrubs and trees to be planted. This may include allowances for natural regeneration from an existing seed bank or planting;
    - (6) A plan to control exotic invasive vegetation;
    - (7) Elevation(s) and slope(s) of the restoration area to ensure they conform with required elevation and hydrologic requirements of target plant species;
    - (8) Geomorphology and habitat features of stream or other open waters;
    - (9) Site management and maintenance requirements.

- vi. Five-year monitoring and maintenance plan:
  - (1) A schedule to visit the restoration site annually for five years or longer as necessary to confirm that the design standards are achieved. Revise the restoration plan if design standards are not achieved after initial 5-year period. Continue annual monitoring until restoration performance criteria are met;
  - (2) During each visit, inspect for and make plans to correct any factors that may prevent attainment of design criteria (e.g., low plant survival, invasive species, wildlife damage, and drought);
  - (3) Keep a written record to document the date of each visit, site conditions and any corrective actions taken.

## ACCESS AND STAGING CONDITIONS

ODOT shall:

1. Marking. Flag the boundaries of clearing limits associated with site access and construction to prevent ground disturbance of critical riparian vegetation, wetlands and other sensitive sites beyond the flagged boundary.
2. Use existing roadways, travel paths, and drilling pads whenever possible, unless construction of a new way or drilling pad would result in less habitat take.
3. Temporary roads or drilling pads built mid-slope or on slopes steeper than 30% are not authorized without project-specific Corps approval.
4. If temporary roads are required through wetlands, crossings, such as culverts, will be installed to maintain connectivity between wetland areas.
5. In the case of road removal, ODOT shall ensure all affected stream and bank areas are restored to their approximate original contour and substrate.
6. Locate vehicle staging, cleaning, maintenance, refueling, and fuel storage facilities (1) in areas that have been previously compacted, disturbed, and cleared (if available) and (2) in areas where delivery of contaminants to the soil and waters can be prevented, contained, and cleaned rapidly.
7. Minimum area. Confine construction impacts to the minimum area necessary to complete the project.

## COMPENSATORY MITIGATION CONDITIONS

ODOT shall:

1. Ensure the proposed action meets the goal of 'no net loss' of wetland functions and values by offsetting unavoidable long-term permanent and temporary adverse effects to wetlands and/or aquatic resources. Offsetting actions will be such that they are commensurate with the amount, type, timing, and significance of adverse effects to resources as much as possible. Activities that reduce or remove functions or that delay or prevent development of desired functions or conditions of wetland and/or aquatic resources require a Compensatory Mitigation Plan that describes how this will be achieved. General considerations for these plans include:
  - a. Make mitigation plans compatible with adjacent land uses or, if necessary, use an appropriate buffer to separate mitigation areas from developed areas or agricultural lands so that desired functions and values will not be significantly reduced by the direct or indirect impacts of adjacent

land uses. Adjacent/proximal land use and land management will be accounted for in the assessment of the functional site value.

- b. Base the level of required mitigation on a functional assessment of adverse effects of the proposed project, and functional replacement (i.e., 'no net loss of function'), whenever feasible, or a minimum one-to-one linear foot or acreage replacement ratio shall be applied. As necessary, the replacement ratio shall be adjusted to accommodate the risk of failure associated with some mitigation projects and in recognition of the long periods of time sometimes necessary for successful mitigation projects to provide desired functions and conditions.
  - c. Acceptable mitigation must be consistent with all program-specific environmental performance standards and may include:
    - i. Re-establishment or rehabilitation of natural or historic functions when self-sustaining, natural processes are used to provide the functions.
    - ii. Participation in Federally approved mitigation banks and Corps-approved ODOT CMCS mitigation sites.
  - d. Actions that require construction of permanent structures, active maintenance, creation of functions where they did not historically exist, or that simply preserve existing functions are not authorized, unless otherwise approved in writing by the Corps.
  - e. Whenever feasible, complete mitigation before, or concurrent with, project construction to reduce temporal loss of ecosystem functions and simplify compliance.
  - f. When project construction begins before mitigation is completed, show the Corps a mitigation project site has been secured and appropriate financial assurances are in place.
    - i. Complete all work necessary to carry out the mitigation plan no later than the first full growing season following the start of project construction, whenever feasible.
    - ii. If beginning the initial mitigation actions within that time is infeasible, then include other measures that mitigate for the consequences of temporal losses in the mitigation plan.
  - g. Include all pertinent elements of a site restoration plan, outlined above, and the following elements.
    - i. Consideration of the following factors during mitigation site selection and plan development.
      - (1) Watershed considerations related to specific resource needs of the affected area.
      - (2) Existing technology and logistical concerns.
    - ii. A description of the legal means for protecting mitigation areas, and a copy of any legal instrument relied on to secure that protection. Mitigation areas will be secured and protected on a permanent basis, utilizing the legal and procedural tools best suited to doing so.
    - iii. All mitigation actions associated with the Bridge Program will comply with the Corps' Regulatory Guidance Letter (RGL) on Compensatory Mitigation Projects (RGL No. 02-2 dated December 24, 2002), as appropriate.
2. Propose on-site compensatory mitigation only if it's viable, opportunistic, and ecologically preferable to Corps-approved off-site compensatory mitigation opportunities consistent with the Comprehensive Mitigation Conservation Strategy (CMCS). Viable, opportunistic, and ecologically preferable means on-site opportunities are ample with a good chance of success and add appreciable ecological value to the local wetland or aquatic resource.

On-site compensatory mitigation opportunities for adverse impacts to waters of the U.S. should be considered first when impacted resources provide unique or significant values for the site. For example:



- a. forested wetlands, vernal pools, wet prairie, sanctuaries and refuges, vegetated shallows, coral reefs, riffle and pool complexes, mud flats, or tidal wetlands;
  - b. wetlands considered to perform functions "important to the public interest" (as defined in i through viii of 33 CFR 320.4(b)(2)), or where a particular alteration of a wetland may constitute a minor change but its cumulative impact results in a major impairment of wetland resources; or
  - c. adjacent to waters of the U.S. described in a. or b. where project impacts would indirectly affect the adjacent wetland or water resources.
3. Compensatory mitigation is not required for actions with temporary impacts and/or temporary fill in low quality waters of the U.S. For the purposes of the considering compensatory mitigation for the RGP, low quality is defined to include disturbed or invasive-dominated sites with low functions and values that are not waters of the U.S. listed above in a. through c. of Compensatory Mitigation Condition 2.

### **CMCS MITIGATION AND MONITORING PLAN APPROVAL PROCESS CONDITIONS**

1. Regional CMCS mitigation sites.
  - a. As regional CMCS mitigation sites will compensate for unavoidable losses to waters of the U.S. for multiple bridge projects, regional CMCS mitigation proposals must also meet the same information requirements as mitigation banking instruments as outlined in Section II. Policy Consideration, C. Establishment of Mitigation Banks, 2. Mitigation Banking Instruments of the 1995 Federal Guidance for the Establishment, Use and Operation of Mitigation Banks. ODOT shall also ensure the proposal is consistent with the CMCS, meets ecological priorities and the needs of bridge project impacts within an Ecoprovince, and includes an Adaptive Management Program. ODOT shall submit regional mitigation plans for final approval by the Corps in collaboration with other CMCS stakeholders for use under the RGP.
  - b. Individual projects may not propose a regional CMCS mitigation site as compensatory mitigation until the Corps approves its use for the RGP.
2. Individual CMCS mitigation sites. For bridge projects requiring an individual compensatory mitigation proposal, ODOT shall submit a compensatory mitigation and monitoring proposal consistent with the CMCS to the Corps for approval with the RGP Notification. ODOT is encouraged to work with the Corps prior to Notification submittals to ensure appropriateness of mitigation and timely authorization.
3. CMCS mitigation monitoring and reporting requirements. The Corps will incorporate mitigation success performance standards and monitoring and reporting protocols as conditions of the RGP authorization upon approval of regional and individual CMCS mitigation plans. ODOT shall report on regional mitigation sites at the RGP program level and on individual mitigation sites at the project level. The Corps will enforce regional mitigation site conditions at the RGP program level and individual mitigation site conditions at the project level.

### **CORPS OF ENGINEERS DISCRETIONARY AUTHORITY**

The Corps, at its discretion, may require an individual permit for any project proposed for authorization under this RGP.

### **EXPIRATION, MODIFICATION, OR REVOCATION OF THIS PERMIT**

Activities authorized under this RGP 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 RGP expiration, modification, 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.

### **LIMITS OF THIS AUTHORIZATION**

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

**LIMITS OF FEDERAL LIABILITY**

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

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. 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.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of the Corps that issuance of this permit is not contrary to the public interest was made in reliance on the information ODOT provided.

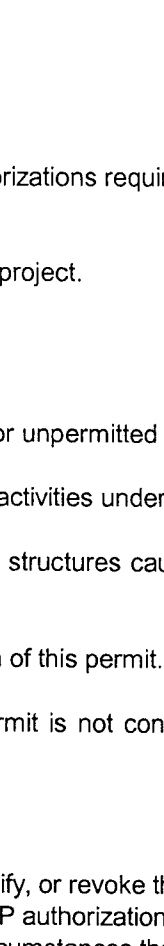
**REEVALUATION OF PERMIT DECISION**

The District Engineer may reevaluate this RGP 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 RGP authorization for any specific geographic areas, class of activities, or class of water within the State of Oregon. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. ODOT fails to comply with the terms and conditions of this RGP.
- b. The information provided by ODOT in support of the RGP application proves to have been false, incomplete, or inaccurate.
- c. Significant new information surfaces which the Corps did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring ODOT to comply with the terms and conditions of the permit and for the initiation of legal action where appropriate. ODOT will be required to pay for any corrective measures ordered by the Corps, and if ODOT fails to comply with such directive, the Corps may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill ODOT for the cost.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

  
 \_\_\_\_\_  
 (DISTRICT ENGINEER)

7-29-04  
 (DATE)

*For:* Richard W. Hobernicht  
 Colonel, Corps of Engineers  
 District Engineer