

Department of State Lands
775 Summer Street, Suite 100
Salem, OR 97301-1279
☎ 503-986-5200

Permit No.:	<u>33682-FP Renewal</u>
Permit Type:	<u>Removal/Fill</u>
Waterway:	<u>Wetland/Mill Creek</u>
County:	<u>Marion</u>
Expiration Date:	<u>October 20, 2015</u>

OREGON DEPARTMENT OF ADMINISTRATIVE SERVICES

IS AUTHORIZED IN ACCORDANCE WITH ORS 196.800 TO 196.990 TO PERFORM THE OPERATIONS DESCRIBED IN THE ATTACHED COPY OF THE APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:

1. This permit does not authorize trespass on the lands of others. The permit holder shall obtain all necessary access permits or rights-of-way before entering lands owned by another.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit must comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action, which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. Employees of the Department of State Lands and all duly authorized representatives of the Director shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
6. Any permit holder who objects to the conditions of this permit may request a hearing from the Director, in writing, within twenty-one (21) calendar days of the date this permit was issued.
7. In issuing this permit, the Department of State Lands makes no representation regarding the quality or adequacy of the permitted project design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196, 390, and related administrative rules.
8. Permittee shall defend and hold harmless the State of Oregon, and its officers, agents, and employees from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.
9. Authorization from the U.S. Army Corps of Engineers may also be required.

NOTICE: If removal is from state-owned submerged and submersible land, the applicant must comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you must comply with ORS 274.905 to 274.940. This permit does not relieve the permittee of an obligation to secure appropriate leases from the Department of State Lands, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact the Department of State Lands, 503-986-5200.

Lori Warner-Dickason, Northern Region Manager
Wetlands & Waterways Conservation Div.
Oregon Department of State Lands



Authorized Signature

October 20, 2010

Date Issued

ATTACHMENT A

Permittee: Oregon Department of Administrative Services

Special Conditions for Removal/Fill Permit No. 33682-FP

READ AND BECOME FAMILIAR WITH CONDITIONS OF YOUR PERMIT.

The project site may be inspected by the Department of State Lands (DSL) as part of our monitoring program. DSL has the right to stop or modify the project at any time if you are not in compliance with these conditions. A copy of this permit shall be available at the work site whenever authorized operations are being conducted.

1. **Responsible Party:** By proceeding under this permit, Department of Administrative Services (DAS) agrees to comply with and fulfill all terms and conditions of this permit. DAS is responsible for carrying out the terms and conditions of this permit unless the permit is officially transferred to another party as approved by DSL.
2. **Authorization to Conduct Removal and/or Fill:** This permit authorizes the placement of up to 7,000 cubic yards of material in T8S R2W Section 5, Tax Lot 2000 and Section 8, Tax Lots 105, 108 and 109 in wetlands, Marion County, as described in the attached permit application, map and drawings, dated February 2005 ("original application") and as revised June, 2010 ("revised application"), for the Mill Creek Corporate Center phases I-B and I-C. In the event information in the application conflicts with these permit conditions, the permit conditions prevail.
3. **Authorization to Conduct Compensatory Mitigation:** This permit also authorizes removal and fill activities necessary to complete the required compensatory mitigation.
4. **Changes to the Project or Inconsistent Requirements from Other Permits:** It is the permittee's responsibility to ensure that all state, federal and local permits are consistent and compatible with the final approved project plans and the project as executed. Any changes made in project design, implementation and/or operating conditions to comply with conditions imposed by other permits must be approved by DSL prior to implementation.
5. **DSL May Halt or Modify:** DSL retains the authority to temporarily halt or modify the project in case of unforeseen damage to natural resources.
6. **DSL May Modify Conditions Upon Permit Renewal:** DSL retains the authority to modify conditions upon renewal, as appropriate, pursuant to the applicable rules in effect at the time of the request for renewal or to protect waters of this state.

Pre-Construction

7. **Stormwater Management Approval Required Before Beginning Work:** Issuance of the permit is contingent upon acquisition of a National Pollution Discharge Elimination System (NPDES) permit from the Oregon Department of Environmental Quality.

8. **Pre-construction Resource Area Flagging:** Before any site grading, the surveyed boundaries of the avoided wetlands and the wetland mitigation areas located adjacent to project construction areas shall be surrounded by bright orange construction fencing, which shall be maintained during construction of the project. There shall be no heavy equipment within fenced areas, except during mitigation construction.

General Construction Conditions

9. **Water Quality Certification:** The Department of Environmental Quality (DEQ) has issued a Clean Water Act Section 401 Water Quality Certification (WQC) for this project. Conditions of that Section 401 WQC shall govern any allowable turbidity exceedance and monitoring requirements.
10. **Erosion Control Methods:** The following erosion control measures (and others as appropriate) shall be installed prior to construction and maintained during and after construction as appropriate, to prevent erosion and minimize movement of soil into waters of this state.
- a. All exposed soils shall be stabilized during and after construction in order to prevent erosion and sedimentation.
 - b. Filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures shall be used to prevent movement of soil into waterways and wetlands.
 - c. To prevent erosion, use of compost berms, impervious materials or other equally effective methods, shall be used to protect soil stockpiled during rain events or when the stockpile site is not moved or reshaped for more than 48 hours.
 - d. Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian and wetland areas shall use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waived upon approval by DSL. At project completion, disturbed areas with soil exposed by construction activities shall be stabilized by mulching and native vegetative plantings/seeding. Sterile grass may be used instead of native vegetation for temporary sediment control. If soils are to remain exposed more than seven days after completion of the permitted work, they shall be covered with erosion control pads, mats or similar erosion control devices until vegetative stabilization is installed.
 - e. Where vegetation is used for erosion control on slopes steeper than 2:1, a tackified seed mulch shall be used so the seed does not wash away before germination and rooting.
 - f. Dredged or other excavated material shall be placed on upland areas having stable slopes and shall be prevented from eroding back into waterways and wetlands.
 - g. Erosion control measures shall be inspected and maintained as necessary to ensure their continued effectiveness until soils become stabilized.
 - h. All erosion control structures shall be removed when the project is complete and soils are stabilized and vegetated.

11. **Hazardous, Toxic, and Waste Material Handling:** Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint, wood treated with leachable preservatives or

other deleterious waste materials shall not be allowed to enter waters of this state. Machinery refueling is to occur at least 150 feet from waters of this state and confined in a designated area to prevent spillage into waters of this state. Project-related spills into waters of this state or onto land with a potential to enter waters of this state shall be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311.

12. Federally Listed Endangered or Threatened Species: When listed species are present, the authorization holder must comply with the Federal Endangered Species Act. If previously unknown listed species are encountered during construction, all construction activity shall immediately cease and the permit holder must contact DSL.

13. Archaeological Resources: If any archaeological resources and/or artifacts are encountered during construction, all construction activity shall immediately cease. The State Historic Preservation Office shall be contacted (phone: 503-986-0674).

Mitigation Conditions

Compensatory Wetland Mitigation

The following conditions apply to the compensatory wetland mitigation actions proposed in revised application, June 2010.

14. Acreage and Type of Compensatory Mitigation: Mitigation shall be conducted according to the acreages and methods described in the table below.

Acres	Cowardin/HGM Class	Method
Authorized Impacts:		
3.34 acres	Palustrine emergent/flats	
Required Mitigation: CWM area "Phase 1", cell D		
3.81 acres (1.27 credits)	Palustrine emergent, scrub-shrub, forested/depressional outflow	enhancement
1.02 acres (0.68 credits)	Palustrine emergent, scrub-shrub, forested/depressional outflow	creation
1.52 acres (1.52 credits)	Palustrine emergent, scrub-shrub, forested/depressional outflow	restoration
TOTAL MITIGATION : 6.35 acres (3.47 credits)		

15. Mitigation Site Location: Mitigation shall be conducted on-site. The center-point of the mitigation site is 44.888876 degrees Latitude, -122.96822 degrees Longitude. The current legal description is Township 8S, Range 2W, Section 8, tax lots 106 and 107. This is represented as CWM Phase 1, Cell D, as depicted in revised application, Figure 5.

16. Delay in Mitigation Site Development: Mitigation site grading shall be completed prior to or within the same construction season as the commencement of the wetland fill activity. A delay of up to two years between impact and mitigation site development shall be allowed under the following conditions:

- a. The permittee shall notify the Department immediately upon identification of the need for delay in mitigation
 - b. The permittee shall provide an additional 25 percent mitigation credit to offset the temporal loss of wetland function incurred by the delay.
17. **Grading, Weirs and Berms:** Grading, weirs, berms and wood habitat structures for mitigation area shall be performed and placed consistent with revised application, Figures CO1 to CO7 and C28.
18. **Planting:** Mitigation area shall be planted as specified in revised application, drawings EC08, EEC09 and EC10. Woody planting shall be physically protected from herbivore damage as necessary. Plantings shall be irrigated as necessary to avoid drought stress for a minimum of two years after installation.
19. **Storm Water Discharges to Mitigation Area:** Storm water shall be pre-treated so as to meet state water quality standards prior to discharge to the mitigation area.
20. **Signs Required:** Signs shall be posted along the mitigation site perimeter at a minimum spacing of 200' stating that the area behind the sign is a protected wetland restoration site.
21. **Public Use:** Any installation of footpath and interpretive signage within the buffer zone for public uses is subject to DSL review and approval.
22. **Long-term Protection of the Mitigation Site - Deed Restriction:** The mitigation site shall be protected in perpetuity by recording the Deed Restrictions approved by the Department. A copy of the recorded instrument must be sent to the Department with the post-construction report.
23. **Long-term Maintenance:** Long-term site maintenance will be provided by the City of Salem and managed in perpetuity as a protected wetland site.

Monitoring And Reporting Requirements

24. **Post-Construction Report Required:** A post-construction report demonstrating as-built conditions and discussing any variation from the approved plan shall be provided to the Department within 90 days of mitigation site grading. The post-construction report shall include:
- a. A scaled drawing, accurate to 1-foot elevation, showing the finished contours of the mitigation site.
 - b. A narrative that describes any deviation from the approved mitigation plan.
 - c. A copy of the recorded deed restriction.
25. **Term of Monitoring; Annual Monitoring Reports Required:** The permittee shall monitor the mitigation site to determine whether the mitigation site is meeting performance standards for a minimum period of 5 growing seasons after completion of all the initial plantings. Annual monitoring reports are required.

26. Annual Monitoring Report Due Date: Annual monitoring reports are due by December 31 of each year.

27. Extension of the Monitoring Period: The monitoring period may be extended, at the discretion of the Department, for failure to provide monitoring reports, failure of the mitigation site to meet performance standards, or when needed to evaluate re-planting or other corrective or remedial actions.

28. Release of Mitigation Obligation: Mitigation monitoring is required until DSL has officially released the site from further monitoring.

29. Failure to Submit Monitoring Reports: Failure to submit the required monitoring report by the due date may result in an extension of the monitoring period, forfeiture of the financial security and/or enforcement action.

30. Contents of the Annual Monitoring Report: The annual monitoring report shall include the following information:

- a. Completed Monitoring Report Cover Sheet, which includes permit number, permit holder name, monitoring date, report year, performance standards, and a determination of whether the site is meeting performance standards.
- b. Impact and mitigation site location map(s).
- c. A brief narrative that describes maintenance activities and recommendations to meet success criteria.
- d. Mitigation site map showing permanent plot locations that correspond to the data collected and fixed photo-points.
- e. Data collected to support the conclusions related to the status of the site relative to the performance standards listed in this permit (include summary/analysis in the report and raw data in the appendix).
- f. Photos from fixed photo points (include in the appendix).
- g. Other information necessary or required to document compliance with the performance standards listed in this permit.
- h. A post-construction functional assessment by the end of the monitoring period.

31. Corrective Action May be Required: The Department retains the authority require corrective action in the event the performance standards are not accomplished at any time within the monitoring period.

Performance Standards

To be deemed successful, the mitigation areas including buffers shall meet the following performance standards, as determined by DSL:

32. Establishment of Permanent Monitoring Locations Required: Permanent plot locations must be established during the first annual monitoring in sufficient number and locations to be representative of the site. The permanent plot locations must be clearly marked on the

ground. A final monitoring plan including proposed locations and method shall be submitted to DSL for review and approval prior to the first annual monitoring event.

- 33. Wetland Acreage Required:** The CWM site will, at a minimum, demonstrate a sufficient number of acres created, restored and enhanced to offset 3.34 acres wetland impact, as determined by a wetland delineation during spring of a year when precipitation has been near normal, vegetation has been established, and irrigation has been removed for at least two years.

Herbaceous Wetlands

- 34. Native Species Cover:** The cover of native species, as defined in the USDA Plants Database, in the herbaceous stratum is at least 60%.

a. **Invasive Species Cover:** The cover of invasive species is no more than 10%. A plant species should automatically be labeled as invasive if it appears on the current Oregon Department of Agriculture noxious weed list, plus known problem species including *Phalaris arundinacea*, *Mentha pulegium*, *Holcus lanatus*, *Anthoxanthum odoratum*, and the last crop plant if it is non-native. Non-native plants should be labeled as such if they are listed as non-native on the USDA Plants Database. Beginning in Year 2 of monitoring, DSL will consider a non-native plant species invasive if it comprises more than 15% cover in 10% or more of the sample plots in any habitat class, and increases in cover or frequency from the previous monitoring period. Plants that meet this definition will be considered invasive for all successive years of monitoring.

b. **Bare Substrate Cover:** Bare substrate represents no more than 20% cover.

- 35. Species Diversity:** By Year 3 and thereafter, there are at least 6 different native species. To qualify, a species must have at least 5% average cover in the habitat class, and occur in at least 10% of the plots sampled.

- 36. Moisture Prevalence Index:** Prevalence Index is <3.0.

Shrub-dominated and Forested Wetlands

- 37. Native Species Cover:** The cover of native species, as defined in the USDA Plants Database, in the herbaceous stratum is at least 60%.

- 38. Invasive Species Cover:** The cover of invasive species is no more than 10%. A plant species should automatically be labeled as invasive if it appears on the current Oregon Department of Agriculture noxious weed list, plus known problem species including *Phalaris arundinacea*, *Mentha pulegium*, *Holcus lanatus*, *Anthoxanthum odoratum*, and the last crop plant if it is non-native. Non-native plants should be labeled as such if they are listed as non-native on the USDA Plants Database. Beginning in Year 2 of monitoring, DSL will consider a non-native plant species invasive if it comprises more than 15% cover in 10% or more of the sample plots in any habitat class, and increases in cover or frequency from the previous monitoring period. Plants that meet this definition will be considered invasive for all successive years of monitoring. After the site has matured to the stage when desirable canopy species

reach 50% cover, the cover of invasive understory species may increase but may not exceed 30%.

39. Bare Substrate Cover: Bare substrate represents no more than 20% cover.

40. Woody Vegetation: The density of woody vegetation is at least 1,600 live native plants (shrubs) and/or stems (trees) per acre OR the cover of native woody vegetation on the site is at least 50%. Native species volunteering on the site may be included, dead plants do not count, and the standard must be achieved for 2 years without irrigation.

41. Species Diversity: By Year 3 and thereafter, there are at least 6 different native species. To qualify, a species must have at least 5% average cover in the habitat class, **and** occur in at least 10% of the plots sampled.

42. Moisture Prevalence Index: Prevalence Index total for all strata is <3.0.

Upland buffers

43. Native Species Cover: The cover of native species, as defined in the USDA Plants Database, is at least 60%.

44. Invasive Species Cover: A plant species should automatically be labeled as invasive if it appears on the current Oregon Department of Agriculture noxious weed list, plus known problem species including *Phalaris arundinacea*, *Mentha pulegium*, *Holcus lanatus*, *Anthoxanthum odoratum*, and the last crop plant if it is non-native. Non-native plants should be labeled as such if they are listed as non-native on the USDA Plants Database. Beginning in Year 2 of monitoring, DSL will consider a non-native plant species invasive if it comprises more than 15% cover in 10% or more of the sample plots in any habitat class, and increases in cover or frequency from the previous monitoring period. Plants that meet this definition should be considered invasive for all successive years of monitoring. After the site has matured to the stage when desirable canopy species reach 50% cover, the cover of invasive understory species may increase but may not exceed 30%.

Renewal Issued: October 20, 2010



