



Oregon Water Resources Department Alternate Reservoir Application

- [Main](#)
- [Help](#)
- [Return](#)
- [Contact Us](#)

For impoundments less than 10 feet in height or storing less than 9.2 acre feet of water.

Today's Date: Tuesday, November 6, 2018

Base Application Fee.		\$410.00
Proposed Dam Height in feet.	4	
Proposed Reservoir volume in Acre Feet.	5	\$175.00
Permit Recording Fee. ***		\$520.00
*** the Permit Recording Fee is not required when the application is submitted but, must be paid before a permit will be issued. It is fully refundable if a permit is not issued. If the recording fee is not paid prior to issuance of the Final Order, permit issuance will be delayed.	Recalculate	
Estimated cost of Permit Application		\$1,105.00

OWRD Fee Schedule

Fee Calculator Version: B20170117

R-88677



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem Oregon 97301
 (503) 986-0900
 www.wrd.state.or.us

**Application for a Permit to
 Store Water
 in a Reservoir
 (Alternate Review)**

Alternate Review Process (ORS 537.409): You may use this form for any reservoir storing less than 9.2 acre-feet or with a dam less than 10 feet high.

Use a separate form for each reservoir

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. If any requested information does not apply, insert "n/a". A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/OWRD/PUBS/forms.shtml.

1. APPLICANT INFORMATION

Applicant: John Auer (Manager)
First Last
 Mailing Address: Attn: Auer Farms LLC, 10325 Wells Landing Rd.,
Independence Oregon 97351
City State Zip
 Phone: 503-551-2449 541-754-8123
Home Work Other

Fax: _____ E-Mail Address*: jwauerjr@gmail.com

* By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (paper copies of the final order documents will also be mailed.)

RECEIVED
 NOV 05 2018

2. AGENT INFORMATION

The agent is authorized to represent the applicant in all matters relating to this application.

OWRD

Agent: NA
First Last
 Mailing Address: _____

City State Zip
 Phone: _____
Home Work Other

Fax: _____ E-Mail Address*: _____

* By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (paper copies of the final order documents will also be mailed.)

3. LOCATION AND SOURCE

A. Reservoir Name: Auer Farms LLC Chub Pond

B. Source: Provide the name of the water body or other source from which water will be diverted, and the name of the stream or lake it flows into. Indicate if source is run-off, seepage, or an unnamed stream or spring.

Source: Surface Runoff Tributary to: Jont Creek

C. County in which diversion occurs: Polk

App. No. <u>R-00677</u>	For Department Use Permit No. _____	Date _____
-------------------------	--	------------

D. Reservoir Location

Township (N or S)	Range (E or W)	Section	quarter/quarter	tax lot number
9 S	5 W	21	SE ¹ SW ⁴	100

E. Dam: Maximum height of dam: 4 feet. If excavated, write "zero feet".

F. Quantity: Amount of water to be stored in the reservoir at maximum capacity. List volume in acre-feet: 5 Acre-feet = $\frac{\text{Average Length}(\text{Average Width})(\text{Average Depth})}{43,560}$

Is this project fully or partially funded by the American Recovery and Reinvestment Act? (Federal stimulus dollars) Yes No

4. WATER USE

Indicate the proposed use(s) of the stored water. **NOTE: You may wish to consider filing for "Multipurpose use" for your reservoir. Multipurpose use does not limit the types of future uses for the stored water. Multipurpose covers all uses including: stockwater, fish and wildlife, aesthetics, domestic, irrigation, agriculture, fire protection and pollution abatement.** If any use will be out of reservoir use, regardless of the type of storage listed, a secondary application must be filed to appropriate the stored water.

Multipurpose Use

RECEIVED

NOV 05 2018

OWRD

5. PROPERTY OWNERSHIP

Please provide a copy of the recorded deed(s).

Do you own all the land where you propose to divert, transport, and use water?

Yes (please check appropriate box below then skip to section 5)

There are no encumbrances

This land is encumbered by easements, right of way, roads of way, roads or other encumbrances

No (Please check the appropriate box below)

I have a recorded easement or written authorization permitting access.

I do not currently have written authorization or easement permitting access.

Written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigated and/or domestic use only (ORS 274.040). (Do not check this box if you described your use as "Multipurpose" in #3 above.)

List the names and mailing addresses of all affected landowners:

Auer Farms LLC, Attn John Auer, Manager 10325 Wells Landing Rd.,

Independence, Oregon 97351

6. ENVIRONMENTAL IMPACT

- A. Channel:** Is the reservoir: in-stream or off channel?
- B. Wetland:** Is the project in a wetland? Yes No Don't know
- C. Existing:** Is this an existing reservoir? Yes No
If yes, how long has it been in place? _____ years.
- D. Fish Habitat:** Is there fish habitat upstream of the proposed structure? Yes No Don't know
If yes, how much? _____ miles.
- E. Partnerships:** Have you been working with other agencies? Yes No
Indicate agency, staff and phone numbers of those involved. Also indicate any agencies that are cost sharing in this project.

U S Fish and Wildlife: Chris Seal and Cameron King at 503-623-2749 ODFW Brian Bangs : 541-757-4263

7. WITHIN A DISTRICT

Check here if the point of diversion or place of use are located within or served by an irrigation or other water district.

Irrigation District Name NA	Address	
City	State	Zip

8. DESCRIPTION

Provide a description of the design and operation of the proposed diversion, including a description of how live flow will be passed outside the authorized storage season. Use this space for narrative. You may also provide narrative and sketches on separate pages.

This is a simple shallow water pond constructed by shallow topsoil excavation in the interior of the pond and an approximate 4 foot high by 30 foot wide Barrier Berm at the downslope end of the pond. The footprint of the pond is smaller than a football field. The pond site is located in an agricultural field and bisects a seasonal ditch. A 15 foot wide overflow spillway was cut about one foot deep into the East end of the berm as the outflow. The pond will serve as a protected habitat for a nursery population of Oregon Chub , a native fish recently delisted as a threatened species, and seasonal use by waterfowl and a variety of other animals in the local area.

RECEIVED
NOV 05 2018
OWRD'

If the diversion involves a dam, use this space for sketches of the diversion (e.g. cross-section of the dam with its dimensions, dimension and placement of outlet pipe, means of passing live flow outside of the authorized storage season, and means for providing fish passage).

SEE ATTACHED MAPS

9. SIGNATURE

I swear that all statements made and information provided in this application are true and correct to the best of my knowledge.

John W. [Signature] Manager
Applicant Signature

11-1-18
Date

Before you submit your application be sure you have:

- Answered each question completely.
- Included a legible map that includes Township, Range, Section, quarter-quarter and tax lot number.
- The map must meet map requirements to be accepted.
- Included a land use form or receipt stub signed by a local planning official.
- Included a check payable to Oregon Water Resources Department for the appropriate amount.

RECEIVED

NOV 05 2018

OWRD

WATERMASTER ALTERNATE RESERVOIR APPLICATION REVIEW SHEET

Recommendations for Water Right Applications under the Alternate Reservoir review process (ORS 537.409)

In lieu of the water right application process set forth in ORS 537.140 to 537.211, an owner of a reservoir may submit an alternate reservoir application for a reservoir that has a storage capacity less than 9.2 acre-feet or a dam or impoundment structure less than 10 feet in height. ORS 537.409 describes the criteria used to evaluate alternate reservoir applications.

The review shall be limited to issues pertaining to: a) water availability, b) potential detrimental impact to existing fishery resources; and c) potential injury to existing water rights. (ORS 537.409 (6))

Within 60 days after the department provides public notice...any person may submit detailed, legally obtained information in writing, requesting the department to deny the application for a permit on the basis that the reservoir: (a) Would result in injury to an existing water right; or (b) Would pose a significant detrimental impact to existing fishery resources. (ORS 537.409 (5))

The review of alternate reservoirs is limited to these criteria only.

Application #: R- Applicant's Name: John Auer 9S 5W 21 TL 100 SENW

RECEIVED

NOV 05 2018

OWRD

1) Does the proposed reservoir have the potential to injure existing water rights? NO YES

Explain:

2) Can conditions be applied to mitigate the potential injury to existing water rights? NO YES

If YES, which conditions are recommended:

NA - no conditions are needed. A staff plate would serve no purpose to the watermaster

3) Did you meet with staff from another agency to discuss this application? NO YES

Who: Agency: Date:

Who: Agency: Date:

Watermaster signature:  Date: 10/10/2018

WRD Contact: Caseworker: Water Rights Division, 503-986-0900 / Fax 503-986-0901

NOTE: This completed form must be returned to the applicant

ODFW Alternate Reservoir Application Review Sheet

OWRD

This portion to be completed by the applicant.

Applicant Name/Address/Phone/Email: John Auer, Auer Farms LLC, 10325 Wells Landing Rd., Independence, OR 97351. 541-754-8123 jwauerjr@gmail.com

Reservoir Name: Auer Farms LLC Chub Pond Source: Surface runoff Volume (AF): 5

Twp Rng Sec QQ: _____ Basin Name: Jont Creek in-channel
off-channel

Note: It is unlikely that ODFW will be able to complete this form while you wait, nevertheless we recommend making an appointment to submit the form so as to provide any necessary clarifications. See pg. 6 of Instructions for contact information.

This portion to be completed by Oregon Department of Fish and Wildlife (ODFW) District staff.

- 1) Is the proposed project and AO¹ off channel? YES NO
(if yes then proceed to #4; if no then proceed to #2)
- 2) Is the proposed project or AO located where NMF² are or were historically present?..... YES NO
(if yes then proceed to #3; if no then proceed to #4)
- 3) If NMF are or were historically present:
 - a. Is there an ODFW-approved fish-passage plan?..... YES NO
 - b. Is there an ODFW-approved fish-passage waiver or exemption?..... YES NO

If fish passage is required under ORS 509.580 through .910, then either 3(a) or 3(b) must be "Yes" to move forward with the application. If responses to 3(a) and 3(b) are "No", then the proposed reservoir does not meet the requirements of Oregon Fish Passage Law and shall not be constructed as proposed.

- 4) Would the proposed project pose any other significant detrimental impact to an existing fishery resource locally or downstream?..... YES NO
Explain below (for example, list STE species or other existing fishery resources that would be impacted negatively.)

- Any diversion or appropriation of water for storage during the period _____ through _____ poses a significant detrimental impact to existing fishery resources. *(For example, if diversion of water for storage during a certain time period would cause a significant detrimental impact to an existing fishery resource, then ODFW should recommend conditions or limitations.)* If NMF fish are present at the project site or point of water diversion then the applicant should be advised that a fish screen consistent with screening criteria will be required.
- This proposed pond or reservoir contemplates impounding water in the Columbia Basin above Bonneville Dam. ODFW has determined that additional diversions of water in this area pose a significant detrimental impact to existing fishery resources during the period April 15 through September 30.

¹ AO = Artificial Obstruction means any dam, diversion, culvert or other human-made device placed in waters of this state that precludes or prevents the migration of native migratory fish. ORS 509.580 (1)

² NMF = Native Migratory Fish Species in Oregon as defined by OAR 635 - 412 - 0005 (32)

R-98677

RECEIVED

NOV 05 2018

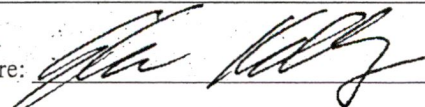
OWRD

If YES, can conditions be applied to mitigate the significant detrimental impact to an existing fishery resource?

NO (explain)

YES (select from Menu of Conditions on next page)

ODFW Signature:



Print Name:

ELISE KEULEY

ODFW Title:

TRAPNET FISH Biologist

Date:

10/17/18

NOTE: This completed form must be returned to the applicant.

Revised 10/4/12

R-00677

Land Use Information Form



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem, Oregon 97301-1266
 (503) 986-0900
 www.wrd.state.or.us

RECEIVED

NOV 05 2018

OWRD

Applicant: John W. Auel, ^{owner} manager Auel Farms LLC
First Last

Mailing Address: 10305 Wells Landing

Independence OR 97351 Daytime Phone: 503-551-2449
City State Zip

A. Land and Location

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), and/or used or developed. Applicants for municipal use, or irrigation uses within irrigation districts may substitute existing and proposed service-area boundaries for the tax-lot information requested below.

Township	Range	Section	¼ ¼	Tax Lot #	Plan Designation (e.g., Rural Residential/RR-5)	Water to be:	Proposed Land Use:
9 ^s	5 ^w	21	SE ^{NW}	100		<input checked="" type="checkbox"/> Diverted <input checked="" type="checkbox"/> Conveyed <input checked="" type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	

List all counties and cities where water is proposed to be diverted, conveyed, and/or used or developed:

Polk

B. Description of Proposed Use

Type of application to be filed with the Water Resources Department:

- Permit to Use or Store Water
 Water Right Transfer
 Permit Amendment or Ground Water Registration Modification
 Limited Water Use License
 Allocation of Conserved Water
 Exchange of Water

Source of water: Reservoir/Pond
 Ground Water
 Surface Water (name) Runoff

Estimated quantity of water needed: _____ cubic feet per second
 gallons per minute
 acre-feet

Intended use of water: Irrigation
 Commercial
 Industrial
 Domestic for _____ household(s)
 Municipal
 Quasi-Municipal
 Instream
 Other Multipurpose

Briefly describe:

Note to applicant: If the Land Use Information Form cannot be completed while you wait, please have a local government representative sign the receipt at the bottom of the next page and include it with the application filed with the Water Resources Department.

See bottom of Page 3. →

For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless the project will be located entirely within the city limits. In that case, only the city planning agency must complete this form. This deals only with the local land-use plan. Do not include approval for activities such as building or grading permits.

Please check the appropriate box below and provide the requested information

Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): _____

Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land-use approvals as listed in the table below. (Please attach documentation of applicable land-use approvals which have already been obtained. Record of Action/land-use decision and accompanying findings are sufficient.) **If approvals have been obtained but all appeal periods have not ended, check "Being pursued."**

Type of Land-Use Approval Needed (e.g., plan amendments, rezones, conditional-use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Land-Use Approval:	
Administrative Review - Map Plan	PCZO 182.040(E)	<input checked="" type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued

Local governments are invited to express special land-use concerns or make recommendations to the Water Resources Department regarding this proposed use of water below, or on a separate sheet.

The proposed project was reviewed and approved by planning application LUO 18-13, attached.

Name: Sidney Mulder Title: Planning Supervisor
Signature: [Signature] Phone: 503-623-9237 Date: 11-1-18
Government Entity: Polk County

Note to local government representative: Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, you will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.

Receipt for Request for Land Use Information

Applicant name: _____

City or County: _____ Staff contact: _____

Signature: _____ Phone: _____ Date: _____

After recording return to:
Smith, Davison & Brasier, PC
PO Box 830
Corvallis, OR 97339-0830

Grantors:
John W. Auer, Jr., Trustee of the J.W. Auer Bypass Trust, and
Trustee of the Maurine M. Auer Living Trust
13800 Simpson Road
Monmouth, OR 97361

Mail tax statements to Grantee:
Auer Farms, LLC
10325 Wells Landing Road
Independence, OR 97351

RECORDED IN POLK COUNTY
Valerie Unger, County Clerk

2018-010110



\$96.00

08/28/2018 09:26:54 AM

REC-WD Cnt=1 Stn=1 C. PARIS
\$10.00 \$10.00 \$11.00 \$80.00 \$5.00

WARRANTY DEED

John W. Auer, Jr., Trustee of the J.W. Auer Bypass Trust, as to an undivided forty-five and one-half percent (45.5%), and John W. Auer, Jr., Trustee of the Maurine M. Auer Living Trust dated July 19, 2000 and restated on January 4, 2006, as to an undivided fifty-four and one-half percent (54.5%), hereinafter called Grantors, do hereby grant, convey, and warranty unto Auer Farms, LLC, hereinafter called Grantee, and unto Grantee's heirs, successors, and assigns all of that certain real property with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, free of encumbrances, except as specifically set forth herein, situated in the County of Polk, State of Oregon, described as follows, to-wit:

SEE EXHIBIT A, ATTACHED HERETO.

All timber rights on all of this property are hereby conveyed, transferred, and assigned to Auer Farms, LLC.

Maurine M. Auer died on March 17, 2018, as evidenced by the previously recorded Death Certificate.

The said property is free from encumbrances except covenants, easements, and restrictions of record. To Have and to Hold the same unto the said Grantee and Grantee's heirs, successors, and assigns forever. This is a testamentary transfer to a limited liability company and there is no consideration for the transfer.

Grantors covenant that Grantors are seized of an indefeasible estate in the real property described above in fee simple, that Grantors have good right to convey the property, that the property is free from encumbrances except as specifically set forth herein, and that Grantors warrant and will defend the title to the property against all persons who may lawfully claim the same by, through, or under the Grantors, provided that the foregoing covenants are limited to the extent of coverage available to Grantors under any applicable standard or extended policies of title insurance, it being the intention of the Grantors to preserve any existing title insurance coverage.

In construing this deed and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

In Witness Whereof, the grantor has executed this instrument this 22nd day of August, 2018.

John W. Auer, Jr.
Trustee of the J.W. Auer Bypass Trust, Grantor

John W. Auer, Jr.
Trustee of the Maurine M. Auer Living Trust, Grantor

STATE OF OREGON, County of Benton) ss.

This Warranty Deed is acknowledged before me this 22nd day of August, 2018, by John W. Auer, Jr., Trustee of the J.W. Auer Bypass Trust and Trustee of the Maurine M. Auer Living Trust, Grantors.



Notary Public for Oregon

RECEIVED

NOV 05 2018

OWRD

EXHIBIT A

TRACT 1: The East 3/4 of the Donation Land Claim of Issac [sic] M. Simpson and Martha Simpson, his wife, being Claim No. 69, Notification No. 2693, in Section 16, 17, 20, and 21 in Township 9 South, Range 5 West of the Willamette Meridian, in Polk County, Oregon.

TRACT 2: Lots Numbered Two (2), Three (3), Four (4), Five (5) and Six (6) of Section 21, Township 9 South, Range 5 West of the Willamette Meridian in Polk County, Oregon.

TRACT 3: A part of the William Williams and wife Donation Land Claim No. 59, Notification No. 2691 and that part of the Robert Gilliam Donation Land Claim No. 57, Notification No. 2689 that lies South of the Luckiamute River bounded as follows: Beginning at the Southwest corner of the Donation Land Claim of William Williams and wife, Notification No. 2691, Claim No. 59, Township 9 South, Range 5 West of the Willamette Meridian in Polk County, Oregon, running thence North 45.50 chains to the Luckiamute River, thence down said river as follows: North 79° East 11.00 chains; thence North 51°30' East 8.40 chains; thence South 19° East 18.55 chains; thence South 65° East 3.29 chains; thence North 37° East 1.37 chains; thence North 25° East 3 chains; thence North 36° East 1.80 chains; thence North 52° East 3.30 chains; thence North 65° East 2.39 chains; thence North 11° East 2.27 chains; thence North 54° East 77 links; thence South 78° East 1.86 chains; thence South 59° East 1.65 chains; thence South 45° East 2.50 chains; thence South 28° East 2.04 chains; thence South 2° West 87 links; thence South 50° West 1.15 chains; thence South 10° West 1.40 chains; thence South 42° East 80 links; thence North 71° East 1.26 chains; thence North 35° East 1.28 chains; thence North 7° East 1.45 chains; thence North 7° West 1.78 chains; thence North 5° West 1.71 chains; thence North 21° East 1.32 chains; thence North 45° East 4.06 chains; thence North 61°30' East 4.94 chains; thence North 64° East 4.37 chains; thence South 72° East 5.40 chains; thence South 4° 30' East, leaving said river, 30.73 chains to the center of the county road; thence South 61° East 1.56 chains along the center of said road; thence South 1° East 1.85 chains along said road; thence South 11° West 79 links; thence South 18°30' West 1.57 chains; thence South 66° West 3.10 chains to the inner angle on the East line of the said William Williams Donation Land Claim; thence South 14.67 chains to the Southeast corner of said Williams Donation Land Claim; thence West 60.87 chains to the place of beginning.

ALSO: A certain water right granted by the State of Oregon to Fred Auer and Sons by instrument dated October 10, 1958, and recorded October 24, 1958 at Page 230 of Water Rights Book 3.

Excepting therefrom a 60-foot-wide strip of land, the East line of which is described as follows: Beginning at a point on the West line of that tract of land conveyed to Donald V. Lofton and Dorothy Y. Lofton by deed recorded in Volume 197, Page 67 Deed Records of Polk County, Oregon, and the intersection of the North line of that tract of land conveyed to Valley and Siletz Railroad Company by deed recorded in Volume 63, Page 417, Deed Records of Polk County, Oregon; and running thence South 4°30' East, 510 feet, more or less, to the County Road.

Excepting therefrom Parcel 1 of Partition Plat #1991-016 in the Northwest 1/4 of Section 21, Township 9 South, Range 5 West of the Willamette Meridian in Polk County, Oregon.

ALSO Excepting therefrom:

Beginning at an iron pipe on the South line of the County Road 4375.98 feet East and 2427.71 feet North from the Southwest corner of the Isaac M. Simpson Donation Land Claim No. 69 in Township 9 South, Range 5 West of the Willamette Meridian in Polk County, Oregon; and running thence North 44°07' East 173.92 feet; thence along the arc of a 149.6 foot radius curve to the right (the long chord of which bears North 84°14' East 192.09 feet); thence South 55°39' East 81.17 feet; thence along the arc of a 209.06 foot radius curve to the left (the long chord of which bears South 74°27'-1/2' East 134.8 feet); thence North 86°44' East 217.05 feet to an iron pipe; thence South 44°07' West 558.76 feet to an iron pipe; thence North 45°53' West 469.1 feet to the place of beginning.

RECEIVED

NOV 05 2018

OWRD

Auer Farms LLC
John W Auer, Manager/Co-Owner
10325 Wells Landing Rd.
Independence OR 97351

November 2, 2018

Oregon Water Resources Department
725 Summer St NE, Ste A
Salem OR 97301

RE: Application for Permit to Store Water in a Reservoir
Auer Farms LLC
Proposed Pond Street Address: 13800 Simpson Rd., Monmouth OR

To Whom It May Concern:

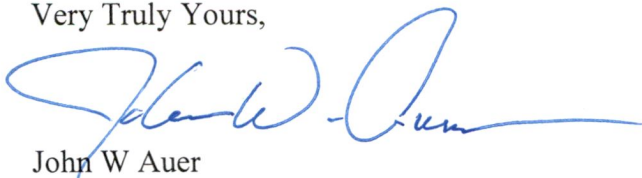
Enclosed please find my completed application for a permit to store water in a reservoir in a proposed pond on property co-owned by me under Auer Farms LLC at the above referenced address. Also enclosed is my check totaling \$1,105.00, covering the \$410.00 exam fee, \$520 permit recording fee and \$35 per A/F x 5 ac feet = \$175.

The proposed pond is part of the Jont Creek Simpson Road Marsh Management plan project recently permitted on the property, a copy of said permit is attached for your reference. Please note that the property owners under that permit application are listed as the J.W. Auer Bypass Trust and the Maurine M. Auer Revocable Living Trust, with me, John W. Auer, as Trustee. With my mother's (Maurine M. Auer) recent passing, the estate is in the final stages of distribution and the farm property and permitted area is now owned by Auer Farms LLC. Agencies involved in the project in addition to myself/Auer Farms LLC, include USFW, ODFW, Luckiamute Watershed council and several others.

The main purpose of the proposed pond will be to provide a habitat outside of the floodplain for some transplanted Oregon Chub, a formerly threatened fish species, which was recently delisted, that reside in the adjacent Jont Creek Marsh Habitat. This Chub population in Jont Creek marsh is the only known location of the fish within the Luckiamute Watershed. The Oregon Chub transplanted to the pond will help ensure the survival of this genetically unique fish population in case some sort of chemical poisoning or hazardous waste was spilled upstream in Jont Creek. Once Jont Creek was cleaned up, Chub from the pond could be used to repopulate the marsh. The pond will also provide habitat for waterfowl and a variety of other wildlife, and vegetation will be planted to enhance that benefit.

Thank you for your time and cooperation in your review and approval of this permit. Please feel free to call with any questions.

Very Truly Yours,



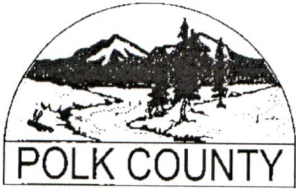
John W Auer
Manager/Owner, Auer Farms LLC
Encl.

RECEIVED

NOV 05 2018

OWRD

R-08677



POLK COUNTY

COMMUNITY DEVELOPMENT

POLK COUNTY COURTHOUSE * DALLAS, OREGON 97338
(503) 623-9237 * FAX (503) 623-6009

AUSTIN M'GUIGAN
Director

NOTICE OF LAND USE APPLICATION

APPLICATION FOR: The applicant has applied for a non-structural floodplain development permit for a project that involves replacing three existing culverts with a precast concrete bridge to improve fish passage and floodplain processes. The applicant has also submitted a significant resources management plan for Jont Creek and to restore an emergent wetland. The proposed projects are located within the Exclusive Farm Use (EFU) Zoning District. The proposed culvert replacement/bridge construction is within the regulated floodplain and within a fish bearing stream, and the proposed wetland restoration is located within approximately 50 feet of a freshwater forested/shrub wetland identified on the National Wetland Inventory (NWI) map.

APPLICANT: US Fish and Wildlife Service, Attn: Chris Seals

OWNER: John Auer Bypass Trust

FILE NUMBERS: LUD 18-13, FPD 18-09

LOCATION: 13800 Simpson Road, Independence OR 97351 (T9S, R5W, Section 21, Tax Lot 100)

REVIEW AND DECISION CRITERIA: Polk County Zoning Ordinance Sections 178.050, 178.060(A)(2) and (B) and 182.040(E).

STAFF CONTACT: Sidney Mulder, Phone: (503) 623-9237; Fax (503) 623-6009
Email: mulder.sidney@co.polk.or.us

DECISION

Based on the Review and Decision Criteria above, this application for non-structural floodplain development and review of a significant resource management plan is **approved**. The application shall be subject to compliance with the conditions listed below, as required by the findings in the Review and Decision Criteria (Section III). Appeals to the Land Use Board of Appeals (LUBA) may only be based on Review and Decision Criteria contained in Section III, below. Any modifications to conditions shall be approved in accordance with provisions of law (e.g., variance, or subsequent land use application, etc.).

Conditions of Development:


1. The applicant shall obtain any necessary Local, State or Federal permits before beginning the project and comply with all conditions in those permits.
2. The applicant shall conduct the proposed non-structural floodplain development in substantially the same location indicated in the maps submitted by the applicant (Attachment A-2). In addition, the proposed non-structural floodplain development shall be conducted using substantially the same methods and mitigation methods proposed and reviewed in this application.
3. The applicant shall implement the significant resource management plan submitted and reviewed in this application, included as Attachment B.
4. The applicant shall be responsible for designing, constructing, operating, and maintaining the activities authorized by this land use decision in a manner that ensures compliance with the Federal Endangered Species Act (ESA), which is not enforced by Polk County. Any questions concerning this issue should be directed to the applicant, and the federal agencies responsible for administration and enforcement of the ESA for the affected species.

RECEIVED

NOV 05 2018

1

EFFECTIVE DATE: August 22, 2018 at 5:00 p.m. This application and approval must be exercised within two (2) years from its effective date or it shall be null and void. If additional time is required, the applicant shall file a written request for extension, with the appropriate fee, addressed to the Polk County Planning Director, at least 30 days prior to the expiration which could extend the validity period for one (1) additional year.


Austin McGuigan, Planning Director

8/10/18
Date

Decisions of the Polk County Planning Director may be appealed to the Polk County Board of Commissioners by any person whose interests are adversely affected or who is aggrieved by the decision. Such appeals must be filed within 12 days of the mailing of the decision, with the Polk County Community Development Department, Courthouse, Dallas, Oregon, on the form supplied by that department and the appropriate fee paid at the time of filing. Failure of an issue to be raised in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue. Appeals to the Land Use Board of Appeals (LUBA) may only be based on Review and Decision Criteria contained in Section III, below. This decision becomes effective only if a written appeal is not filed within the appeal period. If an appeal is filed, this decision is stayed until a determination is made by the governing body.

The decision granted herein does not vest (guarantee) the right of the property owner to use the property as authorized in this land use decision in perpetuity. The property owner is responsible for completing required conditions and establishing and continuing the use in order to retain a vested right. The property owner is advised to consult with an attorney to determine the appropriate actions necessary to obtain and retain rights of use authorized by this decision.

A copy of the application, all documents and evidence relied upon by the applicant, and the applicable criteria are available for inspection at no cost and will be provided at the Community Development Department for the cost of copying: **Polk County Community Development, Polk County Courthouse 850 Main Street; Dallas, OR 97338. (503) 623-9237.**

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS Chapter 215 requires that if you receive this Notice of Decision, it must promptly be forwarded to the purchaser.

RECEIVED

NOV 05 2018

OWRD

**Polk County Community Development Department
Planning Division Staff Report**

APPLICATION FOR: The applicant has applied for a non-structural floodplain development permit for a project that involves replacing three existing culverts with a precast concrete bridge to improve fish passage and floodplain processes. The applicant has also submitted a significant resources management plan for Jont Creek and to restore an emergent wetland. The proposed projects are located within the Exclusive Farm Use (EFU) Zoning District. The proposed culvert replacement/bridge construction is within the regulated floodplain and within a fish bearing stream, and the proposed wetland restoration is located within approximately 50 feet of a freshwater forested/shrub wetland identified on the National Wetland Inventory (NWI) map.

APPLICANT: US Fish and Wildlife Service, Attn: Chris Seals

OWNER: John Auer Bypass Trust

FILE NUMBERS: LUD 18-13, FPD 18-09

LOCATION: 13800 Simpson Road, Independence OR 97351 (T9S, R5W, Section 21, Tax Lot 100)

REVIEW AND

DECISION CRITERIA: Polk County Zoning Ordinance Sections 178.050, 178.060(A)(2) and (B) and 182.040(E).

STAFF CONTACT: Sidney Mulder, Phone: (503) 623-9237; Fax (503) 623-6009
Email: mulder.sidney@co.polk.or.us

I. PROJECT AND PROPERTY DESCRIPTION

REQUEST: The United States Fish and Wildlife Services (USFWS) is proposing to replace three existing culverts with a 20-foot span precast concrete bridge intended to improve fish passage and floodplain processes along the Jont Creek. The culvert replacement project would occur in-stream and within the regulated 100-year floodplain as identified on Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) panel number 41053C0400F, dated December 19, 2006. Jont Creek is also inventoried as a fish bearing stream according to the Polk County Significant Resources Area (SRA) map.

The applicant's second proposal is to restore an emergent marsh wetland which would include removal and fill placement intended to re-contour and restore native wetland hydrology. Restoring the wetland would also include constructing a 4-foot tall earthen berm with shallow side slopes, which would be vegetation after construction. This portion of the project was determined by the applicant's engineer, and concurred by staff, to be located outside of the SFHA, but would be within 50 feet of an existing freshwater forested/shrub wetland that drains into Jont Creek.

The subject property is located within the Exclusive Farm Use (EFU) Zoning District, which allows "Creation, Restoration and Enhancement of Wetlands" as an outright permitted use pursuant to Polk County Zoning Ordinance (PCZO) 136.030(D). However, the proposed project would involve excavation within the Special Flood Hazard Area (SFHA) which requires a non-structural floodplain development permit. The proposed projects would also involve vegetation removal, loss of streamside vegetation, and road construction; all of which are considered to be "conflicting uses" pursuant to PCZO 182.070. As a result, the applicant is required to prepare a management plan that contains a list of strategies and practices that would protect the stream and riparian area during and after construction.

This application was submitted and deemed complete on May 24, 2018.

Location:	Comprehensive Plan Designation	Zoning Designation
Project Location	Agriculture	Exclusive Farm Use
Property North	Agriculture	Exclusive Farm Use
Property East	Agriculture	Exclusive Farm Use

RECEIVED

NOV 05 2018

R-88677

OWPD

Property South	Agriculture	Exclusive Farm Use
Property West	Agriculture	Exclusive Farm Use

PROPERTY DESCRIPTION: The proposed project would be located on the property identified on the Polk County Assessor's Offices as Tax Lot 100 in T9S, R5W, Section 21. Jont Creek is located in the northwestern portion of this property, northwest of Simpson Road.

The culvert replacement portion of the project is located within the regulated 100-year floodplain area as identified on Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) panel number 41053C0400F, dated December 19, 2006. The Polk County Significant Resource Area Map indicates Jont Creek is a fish bearing stream in the vicinity of the proposed culvert replacements/bridge construction. The National Wetlands Inventory (NWI), Dallas Quadrangle, identifies wetlands along Jont Creek, including a freshwater forested/shrub wetland. This proposed wetland restoration project, including the berm construction, would be located within outside of the SFHA, but would be approximately 50 feet away from the inventoried wetland. The project area does not contain any historic buildings and is not within the Willamette River greenway area.

SERVICES:

Fire: Polk county Fire District #1

Police: Polk County Sheriff

II. COMMENTS RECEIVED

Oregon Department of State Lands (DSL):

These projects will require DSL permitting. Please continue to work with Aquatic Resource Coordinator Mike DeBlasi on permitting. He can be contacted at (503) 986-5226.

No other comments were received as of the writing of this staff report. Full comments are included in the record.

III. REVIEW AND DECISION CRITERIA

An application to conduct non-structural floodplain development in the Floodplain Overlay zone is listed in Polk County Zoning Ordinance Section 178.060. A Management Plan for conflicting uses is reviewed in accordance with PCZO 182.040(E). Staff findings and analysis are as follows:

- 1) **A landuse permit shall be obtained from the Polk County Community Development Department prior to commencement of the following types of development:**
 - a) **Non-structural development within any floodplain identified on the Polk County Flood Insurance Rate Map requires a landuse permit. Non-structural development includes mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. [178.060(A)(2)]**

Findings: The applicant is seeking a land use approval to replace three existing failing and undersized culverts with a bridge across Jont Creek approximately 0.5 mile from the Luckiamute River confluence. This permit application is for non-structural development within the floodplain and approval of a riparian area/significant resource management plan. The proposed culvert replacement/bridge construction is intended to improve stream and floodplain processes, and to enhance fish passage. The proposed project is located within the Exclusive Farm Use (EFU) Zoning District, and the Floodplain and Significant Resource Area Overlays. The proposed development would involve removing the existing culverts and replacing them with a bridge. As a result, a land use permit is required. The applicable review and decision criteria are addressed below.

- 2) **The Planning Director is responsible for review and approval of all landuse permit applications submitted for development and uses described in this section. The Planning Director shall determine that such development and uses meet the following requirements:**

RECEIVED

NOV 05 2018

R-88677

OWRD

- a) **The necessary permits for the proposed development have been obtained from those federal, state or local governmental agencies from which prior approval is required.**
[178.060(B)(1)]

Findings: The USFWS (the applicant) has submitted permitting documentation and correspondence from the Oregon Department of State Lands (DSL), the U.S. Army Corps of Engineers (COE), and the Oregon Department of Fish and Wildlife (ODFW). Based on the information provided, staff finds that the applicant has either obtained, or is in the process of obtaining, all necessary permits from the applicable Federal and State government agencies. Approval of this application would not grant any authority over State or Federal permits that may be required for the above-described activity. A condition of approval shall require the applicant to obtain and comply with any necessary permits from Local, State or Federal agencies.

With this condition, the application complies with this criterion.

- b) **The proposed development will not adversely affect the flood carrying capacity of the floodplain. For purposes of this ordinance "adversely affect" means that the cumulative effects of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one (1) foot at any point.** [178.060(B)(2)]

Findings: The applicant submitted a technical memorandum performed by Christopher Smith, P.E., CFM, that includes a cross section of the Luckiamute River and Jont Creek channel at the location of the proposed new bridge crossing and berm construction. Pre-construction and post-construction conditions were modeled in HEC-RAS to determine how the proposed projects would affect water surface elevations. Findings in this report indicate that the cumulative effect, when combined with all other existing and anticipated development, would not increase the water surface elevation of the base flood more than one (1) foot at any point. Cumulative affect was determined by reviewing Polk County Community Development records for the subject tract and adjacent properties within located within the floodplain. Due to the broad floodplain size, which varies between approximately 3000 feet to approximately 6,000 feet, staff finds that this is a sufficient study area for determining cumulative effect. Staff found no evidence of land use approvals for projects that involve existing non-structural floodplain development or anticipated non-structural floodplain development that resulted in any increase in the water surface elevation of the base flood.

Initially, it was unclear whether or not the proposed berm construction/wetland restoration portion of the project would be located within the SFHA, as the proposed project location was very close to the Floodplain Overlay boundary. For this reason, Mr. Smith's evaluation included the berm/wetland restoration in the HEC-RAS analysis as a blocked obstruction with the top elevation set as the proposed top elevation of the berm. Based on this analysis, the results showed the berm as remaining dry at the base flood, and concluded that the berm would be located outside of the modeled base flood. In addition, staff reviewed the applicant's plot plan (Attachment A-2) and compared the location of the proposed wetland restoration project to the boundary of the SFHA. Staff used measurements tools accessed through Polk County's Geographic Information System (GIS) and find that the berm/wetland restoration project would be located approximately 60.0 feet south of the SFHA boundary. Therefore, this this portion of the proposed project is not subject non-structural floodplain development requirements.

Based on the technical memorandum provided by the applicant, the water surface elevation results for the culvert replacement/bridge project reveal a small rise of 0.08 feet immediately upstream from the bridge site, which is within the permissible amount of water surface elevation increase. The report states that the rise effects would be localized and would not encroach on insurable structures. Christopher Smith, P.E., CFM, is a water resource engineer for River Design Group, who stamped these findings with his Oregon Registered Professional Engineer stamp.

Based on the technical memorandum and supporting documentation that was performed by Christopher Smith, P.E., CFM, and stamped with his Oregon Professional Engineer stamp, staff finds

RECEIVED

NOV 05 2018

5

that the proposed non-structural floodplain development would not adversely affect the flood carrying capacity of the floodplain.

The application complies with this criterion.

- c) **Non-structural development within any floodplain identified on the Polk County Flood Insurance Rate Map. Non-structural development includes mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. Approval of the landuse permit shall be based on the following provisions:**

[178.060(B)(4)(a) through (d)]

- i) **Such development shall be consistent with the need to minimize flood damage;**
- ii) **Such development shall have adequate drainage provided to reduce exposure to flood damage; and,**
- iii) **The cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one (1) foot at any point.**
- iv) **If located in the floodway, non-structural development shall meet the requirements of 178.060 (B)(3).**

Findings: This project is designed to remove three failing and undersized culverts that were identified as a partial barrier to fish passage. The culverts would be replaced with a bridge to improve fish passage and enhance floodplain processes. All work would be performed on private property in collaboration with the property owner. The applicant's submitted material indicate that all materials proposed for this project that would be permanent features in the channel and floodplain would be designed to be resistant to flood damage and consist of stable large rocks, in-situ cobble and gravel, boulder, self-ballasting concrete, and vegetated earthen fill, all of which are appropriate for the channel and floodplain environment. These measures and the proposed design are consistent with the need to minimize flood damage and would reduce the exposure to flood damage.

As discussed in Subsection (2)(b) of this section above, the applicant provided a technical memorandum that was prepared and stamped by Christopher Smith, P.E., CFM, with his Oregon Registered Professional Engineer stamp, demonstrating that the cumulative effect when combined with all other existing and anticipated development, would not increase the water surface elevation of the base flood more than one (1) foot at any point. For cumulative effect calculations, the only rise above existing water levels would be 0.08 foot immediately upstream of the bridge site. Based on a review of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), panel number 41053C0400F, dated December 19, 2006, the project is located within the regulated floodplain, but not the regulated floodway. As a result, the development standards listed in PCZO 178.060(B)(3) are not applicable to this application.

Based on the findings discussed above, the application complies with this criterion.

- 3) **If a permitted use in the underlying zone is listed as a conflicting use in Section 182.070, the applicant shall comply with the applicable review procedure and management plan requirements outlined in Section 182.040. This type of review is ministerial and shall be decided by the Planning Director. Appeals are made to the Board of County Commissioners.** [PCZO 182.040(A)]

- a) **The Management Plan: When a "3-C" decision has been made for a particular resource, as indicated on the Goal 5 inventory sheets, the applicant, in coordination with the County and State or federal managing agency (s), shall develop a Management Plan which comprises the following elements:**

- i) **A description of the type and extent of resources involved;**
- ii) **A map showing the exact location of the resource;**

RECEIVED

NOV 05 2018

OWRD

- iii) A print-out from the County Assessor's Office indicating ownership within designated buffer strips; and
- iv) A written statement detailing a proposed strategy to protect the identified significant resources. Such strategy may include, but shall not be limited to the following:
 - 1) Restriction of conflicting activities during critical periods (e.g., sensitive nesting periods);
 - 2) Protecting the resource with buffer strips
 - 3) A Monitoring plan for the site, i.e., determine the long-range affects;
 - 4) Permanent or seasonal road closures to protect the resource site; and
 - 5) Conservation easements, tax incentives or land donations.

If the County and applicant concur on provisions of the management plan, and other applicable criteria are satisfied, approval of the administrative action or conditional use request shall be subject to fulfillment of the management plan objectives. [PCZO 182.040(E)]

Findings: The Polk County Significant Resources Area (SRA) Map indicates that Jont Creek is a fish bearing stream. In addition, the NWI map also identifies a large freshwater emergent wetland associated with Jont Creek, and a drainage identified as a freshwater forested/shrub wetland. Because these wetlands are associated with a fish bearing stream, staff has determined the wetlands to be significant and are therefore subject to the requirement of PCZO Chapter 182.

The applicant is seeking to replace three failing and undersized culverts with a 20-foot span concrete bridge to improve fish passage. Activities to accomplish this would include: removing the culverts, prepping the site for bridge abutments, and installation of the new bridge. The applicant's second proposal is to construct an emergent wetland which would include removal and fill placement intended to re-contour and restore native wetland hydrology. In addition the wetland would be created by constructing a 4-foot tall earthen berm with shallow side slopes, which would be vegetation after construction. These projects involve either in-stream work, or work within the riparian setback area. The proposed activities would necessitate vegetation removal, loss of streamside vegetation, and road construction, all of which are considered to be "conflicting uses" pursuant to PCZO 182.070. As a result, the applicant is required to prepare a management plan that contains a list of strategies and practices that would protect the stream and riparian area during and after construction.

The applicant has submitted a management plan (see Attachment B) that includes a description of the proposed project and a description of the measures that would be implemented to minimize potential impacts within the identified riparian areas. Best management practices for the projects include a limited work period between July 1 – October 15, reseeding all disturbed ground with native perennial plants, staging equipment on the uplands and storing fluids off-site, and ensuring that all service equipment is stocked with spill containment kits and are operated only by certified heavy equipment operators. As part of the applicant's management plan, the applicant submitted several attachments including: project design information and documents, project maps, and permitting documentation and correspondence from the Oregon Department of State Lands (DSL), the U.S. Army Corps of Engineers (COE), and the Oregon Department of Fish and Wildlife (ODFW). This documentation demonstrates that this project and the applicant's management plan has been coordinated with DSL and ODFW, among other regulatory agencies.

A condition of approval shall require the applicant to implement their management plan included as Attachment B. The applicant would be required to continue coordination with all applicable State or Federal agencies and to obtain any necessary Local, State, or Federal permits. The applicant shall be responsible for designing, constructing, operating, and maintaining the activities authorized by this land use decision in a manner that ensures compliance with the Federal Endangered Species Act (ESA), which is not enforced by Polk County. Any questions concerning this issue should be directed to the applicant,

RECEIVED

NOV 05 2018

7

and the Federal agencies responsible for administration and enforcement of the ESA for the affected species.

With the conditions referenced above, staff finds that the applicant's management plan complies with these criteria.

IV. CONCLUSIONS

Based on the Review and Decision Criteria above, staff has found that the proposed development is consistent with the Polk County Zoning Ordinance provisions for non-structural development within a floodplain and a significant resource management plan. The following conditions have been identified as required for completion of this application:

1. The applicant shall obtain any necessary Local, State or Federal permits before beginning the project and comply with all conditions in those permits.
2. The applicant shall conduct the proposed non-structural floodplain development in substantially the same location indicated in the maps submitted by the applicant (Attachment A-2). In addition, the proposed non-structural floodplain development shall be conducted using substantially the same methods and mitigation methods proposed and reviewed in this application.
3. The applicant shall implement the significant resource management plan submitted and reviewed in this application, included as Attachment B.
4. The applicant shall be responsible for designing, constructing, operating, and maintaining the activities authorized by this land use decision in a manner that ensures compliance with the Federal Endangered Species Act (ESA), which is not enforced by Polk County. Any questions concerning this issue should be directed to the applicant, and the Federal agencies responsible for administration and enforcement of the ESA for the affected species.

RECEIVED

NOV 05 2018

OWRD

JONT CREEK-SIMPSON ROAD MARSH MANAGEMENT PLAN

Property Owner(s): J.W. Auer Senior Bypass Trust

Authorized Agent(s): John W. Auer Jr. (trustee), U.S. Fish and Wildlife Service (Partner's for Fish and Wildlife Program), and Polk Soil and Water Conservation District

Stream: Jont Creek

Location: T9S, R5W, S21

Summary Overview

The USFWS (through the Partners for Fish and Wildlife Program) is working in a voluntary and collaborative basis with the private landowner and other conservation partners (Polk SWCD, ODFW, OWEB, etc.) to restore 9 miles of fish passage along lower Jont Creek and ~3 acres of non-floodplain emergent marsh habitat in southern Polk County. This partnership driven and cost leveraged habitat restoration project is expected to provide habitat for an array of species of conservation concern including northern red-legged frog, Oregon chub, and numerous species of wading birds and wintering waterfowl.

Conditions

Current site conditions are a mix of degraded remnant floodplain wetlands (marsh and riparian habitats), Jont Creek channel, and agricultural lands. These may be described as follows:

Remnant floodplain wetlands: these areas show the effects of past land use as evidenced by straightening of Jont Creek channel, history of attempted farming, and subsequent explosion of non-native invasive species (e.g. reed canary grass) after farming was stopped. Though highly altered and degraded, these areas have high restoration potential as the underlying system process (i.e. seasonal activation of the floodplain during high water events) is still largely intact at this location. In fact, this system process being so evident and extent on this site highlights the unique nature of this habitat restoration opportunity as this kind of floodplain function is increasingly rare on the Willamette Valley bottom.

Jont Creek channel: as previously indicated in the description of the floodplain, Jont Creek has been partially channelized due to past land use practices. It is, however, largely flowing through a patchwork of both remnant riparian habitats (scrub shrub and ash swale) as well as the aforementioned reed canary grass in portions of the floodplain. This reach of Jont Creek is also located less than 1 mile upstream from its confluence with the Luckiamute River which makes this locale a particularly rich ecological context within in which to implement habitat restoration projects. Even in its currently degraded condition, the lower Jont Creek system supports myriad species of conservation concern including Upper Willamette winter steelhead, Upper Willamette spring chinook, Oregon chub, coastal cutthroat trout, Pacific lamprey, northern red-legged frogs, etc.

Agricultural Lands: most of the approximately 3 acres of the project area targeted for emergent marsh restoration is currently being farmed. Consistent with what one finds throughout much of the Willamette Valley lowlands, this kind of agricultural activity has become one of the dominant land uses throughout the landscape. However, this landowner is proposing to strike a modified balance between fiduciary responsibility to manage his farm and conserving native bio-diversity via implementing

RECEIVED

NOV 05 2018

OWRD

RECEIVED

NOV 05 2018

OWRD

R-08677

voluntary habitat restoration practices with his conservation partners. To this end, he is offering up these three acres of lower quality farm ground to implement the emergent marsh component of this project.

Project Information

This project consists of two major components; 1) restoring fish passage to approximately 9 miles of lower Jont Creek and 2) restoring ~3 acres of emergent marsh habitat outside the floodplain of lower Jont Creek.

Fish Passage: restoration of fish passage at this location is consistent with multiple conservation plans and strategies including the Conservation and Recovery Plan for Upper Willamette spring chinook and Upper Willamette winter steelhead (NOAA), Oregon Plan for Salmon and Watersheds (OWEB), Oregon Conservation Strategy (ODFW), and the Willamette Valley Conservation Study (USFWS).

Project partners initiated pre-planning work with the landowner in 2014. This entailed exploring various alternatives to restore fish passage along Jont Creek without impacting farm operations and field access. This multi-year planning effort has involved the landowner, Polk Soil and Water Conservation District, Oregon Department of Fish and Wildlife (Salmon Trout Enhancement Program and Native Fish Investigations Program), U.S. Fish and Wildlife Service (Partner's for Fish and Wildlife Program), Oregon Watershed Enhancement Board, and Luckiamute Watershed Council. Emphasis was placed upon identifying approaches that would not only work ecologically and economically, but also be feasible to permit and fund when the project moved from planning to implementation.

An Oregon Watershed Enhancement Board (OWEB) technical assistance grant was secured by Polk Soil and Water Conservation District (PSWCD) in 2015 to conduct technical design alternatives analysis. River Design Group (RDG) in Corvallis was awarded the contract and produced the technical reports pertaining to this design work (please see attached).

Subsequently, project partners, led by PSWCD, secured an OWEB restoration grant to fund implementation of Alternative #3 (pre-cast concrete bridge) in early 2018. The proposed project implementation season for this work is summer/early fall 2018.

Emergent Marsh: restoration of emergent marsh at this location is consistent with multiple conservation plans and strategies including the North American Wetlands Conservation Act (USFWS), North American Waterfowl Management Plan (USFWS), Oregon Conservation Strategy (ODFW), and the Willamette Valley Conservation Study (USFWS).

Much as with the previously described fish passage portion of the project, the project partners initiated pre-planning work with the landowner in 2014. The emergent marsh component is a less technically demanding facet of this project but has been involved the same group of partners to ensure that is well designed and consistent with the holistic objectives of the various project partners.

This portion of the project has moved forward in harmony with the fish passage component to help develop a more holistic and ecologically meaningful project that will benefit myriad taxa (i.e. fish, amphibians, birds, etc.) of conservation concern. Final technical review of potential impacts of berm construction (along with the bridge at the Jont Creek crossing) within the mapped floodplain of lower Jont Creek is being done by River Design Group out of Corvallis, Oregon. A 'no-net rise' analysis for both

RECEIVED

NOV 05 2018

OWRD

R-00677

the proposed bridge and berm was completed by this technical service provider on May 22, 2018 (attached).

Project Specifics

This project is proposed for implementation during the ODFW approved in water work period for the Luckiamute basin (July 1-October 15). Exact timing within this window of time is uncertain and will be based upon a mix of site conditions (i.e. when things will be dry enough), equipment availability, contractor schedules, etc.

An array of best management practices (BMP's) will be instituted to ensure that any inadvertent impacts to the area will be both temporary and short-lived. These BMP's may briefly be summarized as follows:

All project work will be implemented during the approved in water work period for the Luckiamute River watershed (including the emergent marsh project, though not an in water project, the project partners still propose to honor the sub-basin in water work period for best management practices purposes). Project work will also be implemented after primary nesting season for ground nesting birds and post native plant senescence for any stray native plants at the periphery of the proposed project area.

Bridge construction for fish passage is anticipated to be done via contractors that specialize in these kinds of projects and work environments. This work will consist of removing the three failing and undersized culverts, prepping the site for bridge abutments, and bridge installation. These contracts will be closely administered by the project partners to ensure all standard BMP's (as described throughout this section) are fully met.

Primary construction of the emergent marsh will be done via self-propelled scraper operated by agency staff at USFWS. This includes both removal and fill placement consistent with recontouring to restore native wetland hydrology. Finish work (e.g. berm surface, spillway, etc.) may require limited dozer and/or excavator use to ensure project design is adequately implemented. Any disturbed ground within the project area will be seeded with a diverse array of native perennial plants consistent with best management practices for implementing conservation practices that result in ground disturbance. Specifically a mix of *Deschampsia cespitosa*, *Deschampsia elongata*, *Agrostis exarata*, *Hordeum brachyantherum*, and *Beckmania syzigachne* on the berm and any other disturbed ground surrounding the restored marsh (and bridge site). The restored marsh itself will be seeded with a robust mix of *Alisma subcordatum*, *Sparganium eurycarpum*, and *Sagittaria latifolia*. *Salix* spp. cuttings will also be planted below the outside toe of the berm and spillway. Additional best management practices will be instituted in relation to equipment staging and storage of fluids necessary for operation of heavy equipment during habitat restoration. Any heavy equipment used during this project will be staged on uplands out of the project site when not in operation (these uplands may be specifically identified as the farm lane located immediately to the west of proposed project area – clearly visible on air photo). All equipment servicing, fueling, etc. will be done at this equipment staging location. No fluids will be stored on site. Any fluids needed on site will be brought on and off the property by project staff at the start and end of each operational shift. They will be stored on service trucks parked at the upland equipment staging area. All Service equipment is equipped with spill containment kits and are operated by trained and certified heavy equipment operators.

Wildlife Habitat

RECEIVED

NOV 05 2018

OWRD

R-08677

The project is expected to have minimal to nil impacts to wildlife species during the actual construction phase. Post construction benefits to numerous conservation target species are expected to be significant.

Restoring fish passage to approximately 9 miles of the lower Jont Creek system will directly benefit Upper Willamette spring chinook, Upper Willamette winter steelhead, coastal cutthroat trout, Oregon chub, and Pacific lamprey.

Restoration of emergent marsh habitat will benefit northern red-legged frogs, wintering waterfowl (numerous, e.g. mallard, green-winged teal, etc.), wading birds, and Oregon chub.

Improved floodplain function and restored riparian habitat will indirectly benefit the aforementioned fish species as well as directly benefit other conservation focal species such as willow flycatcher, yellow-breasted chat, and northern red-legged frogs.

Attachments:

- Jont Creek Culvert Replacement – Project Design Documents (11-30-16)
- Jont Creek Culvert Replacement – Additional Design Information (1-4-18)
- Project map/site plan (multiple copies provided in these various attachments)
- Floodplain Permitting for Jont Creek Projects – Bridge and Wetland Berm (i.e. no-net rise technical determination) (5-22-18)
- DSL Waterway Habitat Restoration GA approval (4-23-18 – bridge only)
- COE NWP 27 Concurrence Letter (5-4-18 – bridge only)
- ESA compliance (NOAA ANF and e-mails 4-10-18)
- ODFW Fish Passage Plan/Permit (2-23-18)
- NHPA compliance memo (3-26-18)
- DSL/COE JPA application (5-17-18 – marsh only)

RECEIVED

NOV 05 2018

OWRD

R-88677

Alternate Reservoir Application Completeness Checklist

This is the checklist used by WRD staff

Application _____ County _____
Priority Date _____ Township _____ Range _____ Section _____ Taxlot _____
Use _____ Caseworker _____
Amount (AF) _____ Watermaster _____

Minimum Requirements (ORS 537.409)

- Landowner Name, Mailing Address** and Telephone Number.
- Source** and tributary listed. **NO WELLS-MUST HAVE GW APP TO USE A WELL AS A SOURCE**
- Reservoir Location**- Township, Range, Section, Quarter Quarter, Taxlot
- Dam height**, if applicable
- Total Quantity** of Storage Requested: _____
- Proposed Use of the water**. Cannot accept application for use of this stored water at the same time (E2)
- Property ownership indicated?** If applicant does not own all the land is the affected landowner's name and mailing address listed? (Including: lands not owned by applicant, upon which the source is located **OR** that are crossed by the diversion works. This includes any roads or rights-of-way.)
- Environmental Impact** section completed?
- Application signed by the landowner(s)?** All parties noted as applicants must sign the application.
Must be an original "wet" signature.
- Acceptable map ** Indicates requirements of standards set forth by the Commission and causes fatal flaw if not provided by the applicant.**
 - Reservoir Location - noting Township, Range, Section, 1/4 1/4 and Tax Lot number(s)*
 - Scale of the Map, even scale such as 1" = 400', 1" = 1000', or 1" = 1320' **
 - Reference corner on map
 - North Directional Symbol **
 - 1/4's clearly identified
 - Reservoir clearly identified **
 - Dam or POD (If off channel) Location coordinates referenced to a government landsurvey corner*
If no dam, use coordinates to center of reservoir.**
- Completed Watermaster review sheet** signed and dated by Watermaster.
Will the reservoir injure an existing water right? YES NO
If YES, can conditions be applied to mitigate the injury? YES NO **If NO, return the application.**
Did the watermaster determine when water is available for the proposed use? YES NO
The Watermaster review sheet must have been completed within the last 6 months.
If the watermaster determined that water is NOT available, return the application.
- Completed ODFW review sheet** signed and dated by ODFW representative.
Will the reservoir pose a significant detrimental impact to an existing fishery resource? YES NO
If YES, can conditions be applied to mitigate the impact? YES NO **If NO, return the application.**
The ODFW review sheet must have been completed within the last 6 months.
- Completed Land-Use Form** or receipt signed by the appropriate planning department official enclosed?
Does the use on land-use form match the proposed use on the application? Must be an original "wet" signature within the last 12 months.
- Provide a Legal Description** of all the property involved with this application. You may include a copy of your deed land sales contract or title insurance to meet this requirement.

Fees enclosed? Print page from fee calculator
Total Paid \$ _____ **Total Fees \$** _____
Completeness Check by: _____ Date: _____

Revised 2017-8-4

RECEIVED

NOV 05 2018

OWRD

R-88677

Appendix A

Developing your water right often entails grading trenching or other types of construction within waterways, riparian areas, and wetlands. Permits from local, state or federal agencies may be required. A good first step is to check with your local city or county planning office. The following information was provided by the Oregon Division of State Lands.

Activities in Wetlands and Waterways are Regulated by:

- The Division of State Lands (DSL) under the State Removal-Fill Law
- The U.S. Army Corps of Engineers (Corps) under the Federal Clean Water Act and Rivers and Harbors Act
- The State Department of Forestry under the Forest Practices Act
- The U.S. Natural Resource Conservation Service (NRCS) under the Food, Agriculture, Conservation and Trade Act
- Some City and County land use ordinances

What Areas are Regulated?

- Rivers streams and most creeks
- Estuaries and tidal marshes
- Lakes and some ponds
- Permanent and seasonal wetlands
- Regulations apply to all lands, public or private
- A wetland does not have to be mapped by the state or otherwise 'designated' to fall under the regulations
- If you are uncertain if there are regulated wetlands on your property, contact DSL for assistance.

What Activities are Regulated?

- Placement of fill material
- Alteration of stream bank or stream course
- Ditching and draining
- Plowing/disking non-farmed wetlands
- Excavation or dredging of material
- In-water construction (may also require a lease from DSL)
- For some activities, joint application forms can be obtained from DSL or the Corps

What Activities are Exempt

- Some routine maintenance activities
- Established, ongoing agricultural activities and grazing
- Some minor projects involving small amounts of fill or removal

How are Laws Enforced?

The best enforcement is to prevent illegal wetland alterations through information and education. However, when violations do occur, a variety of enforcement tools may be used, including restoration orders, fines of up to \$10,000 per day (DSL), civil and/or criminal charges.

RECEIVED

NOV 05 2018

OWRD