

## Memo to File

**To: R-88824 and R-88825**

**From: Alyssa Mucken**

**Subject: Application R-88824 ("Herbert Swale 2") and R-88825 ("Herbert 3")**

**Date: March 25, 2020**

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I spoke with Jon Pywell, the agent for these two applications this morning. Jon clarified that the intended use is "multi-purpose" use, similar to the other pending applications (R-88823 and R-88826)

Alyssa

*Alyssa Mucken*

Water Rights Section Manager

725 Summer St NE Suite A | Salem OR 97301 | Phone 503-986-0891

Pronouns: she/her/hers



Integrity | Service | Technical Excellence | Teamwork | Forward-Looking



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

**RECEIVED** Application for a Permit to  
**SEP 19 2019**  
**OWRD**  
**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](http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml).

**1. APPLICANT INFORMATION**

Applicant: Jonathan City of Corvallis Parks and Recreation Pywell  
First Last  
 Mailing Address: 1320 SW Avery Park Drive  
Corvallis Oregon 97333  
City State Zip  
 Phone: 541 754 1723 541 740 8061  
Home Work Other

Fax: \_\_\_\_\_ E-Mail Address\*: jonathan.pywell@corvallisoregon.gov

\* 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.)

**2. AGENT INFORMATION**

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

Agent: Jon Pywell  
First Last  
 Mailing Address: 1320 SW Avery Park Drive  
Corvallis Oregon 97333  
City State Zip  
 Phone: 541 754 1723 541 740 8061  
Home Work Other

Fax: 541 758 1786 E-Mail Address\*: jonathan.pywell@corvallisoregon.gov

\* 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: Herbert 3

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: Run off & flooding Tributary to: Muddy creek

C. County in which diversion occurs: Benton

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App. No. _____	For Department Use Permit No. _____	Date _____
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**D. Reservoir Location**

Township (N or S)	Range (E or W)	Section	quarter/quarter	tax lot number
12S	5W	22	NW/NW	1,200

E. Dam: Maximum height of dam: 1 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: 2.01 Acre-feet =  $\frac{\text{Average Length} \times \text{Average Width} \times \text{Average Depth}}{43,560}$

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.

**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:

none

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### 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.

### 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 <i>Greenberry Irrigation District</i>		Address <i>30742 Venell Pl</i>	
City <i>Corvallis</i>	State <i>OR</i>	Zip <i>97333</i>	

### 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.

*Creation of a 1' berm from soil on site to hold water in winter/spring to retard growth of grass to favor conditions required by the streak horned lark for nesting & foraging. Water will leave the swales gradually through a  $\approx 20' \times 6''$  deep opening*

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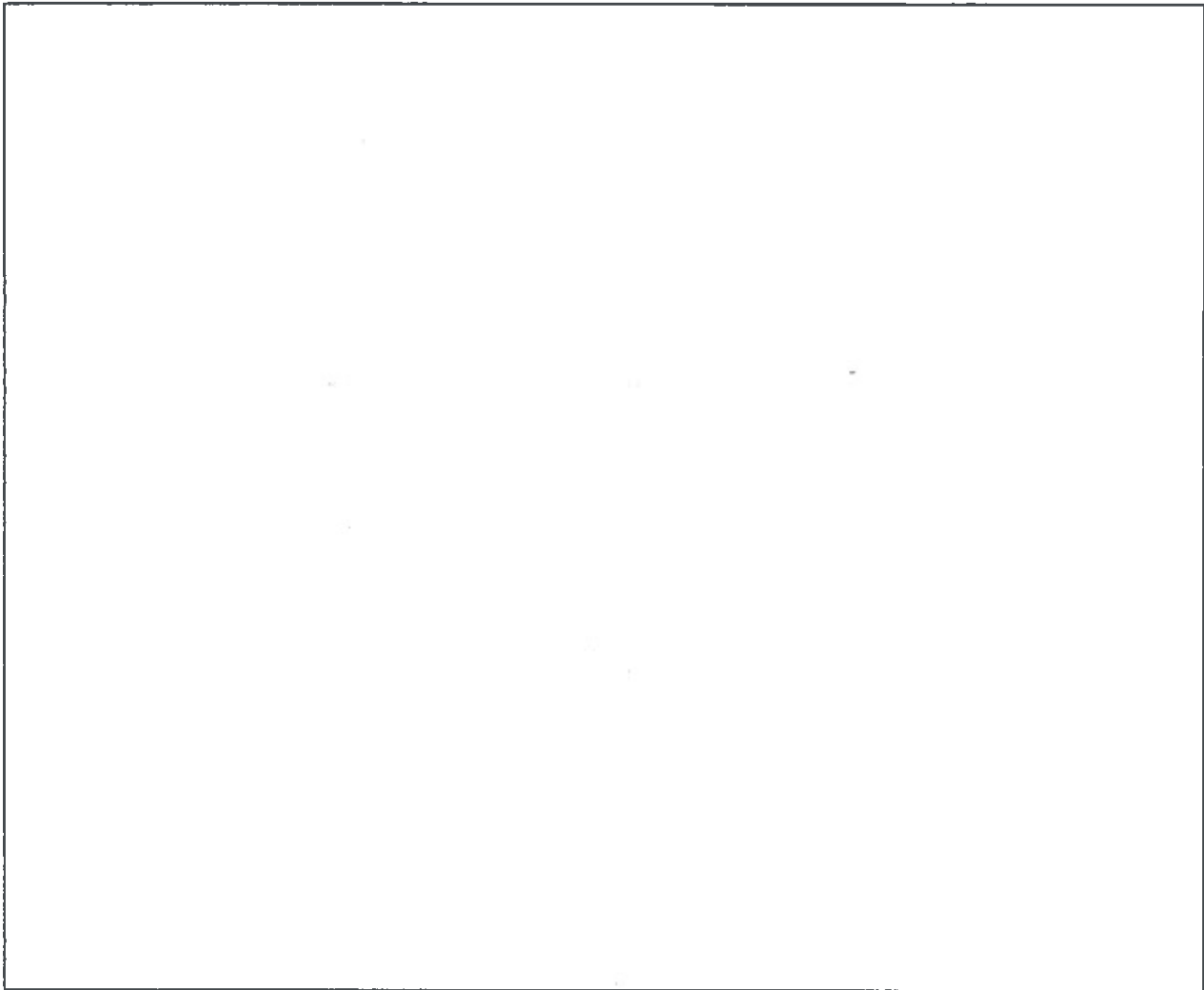
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If the diversion involves a dam, use this space for sketches of the diversion (e.g. cross-section of the dam with its dimensions, dimension and placement of outlet pipe, means of passing live flow outside of the authorized storage season, and means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



**9. SIGNATURE**

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

  
\_\_\_\_\_  
Applicant Signature

March 19 2019  
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.

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# ODFW Alternate Reservoir Application Review Sheet

**This portion to be completed by the applicant.**

Applicant Name/Address/Phone/Email: City of Corvallis Parks & Recreation  
Jonathan Pywell@corvallisoregon.gov  
Jon Pywell 1370 SW Avery Park Drive 541 754 1723

Reservoir Name: Herbert 3 Source: Runoff's flood Volume (AF): 2.0

Twp Rng Sec QQ: 12S, 5W, 22 NE&NW Basin Name: MURPHY 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 AO<sup>1</sup> 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 NMF<sup>2</sup> 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.

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<sup>1</sup> 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)  
<sup>2</sup> NMF = Native Migratory Fish Species in Oregon as defined by OAR 635 - 412 - 0005 (32)

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Lined area for handwritten notes or responses.

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)

Lined area for handwritten notes or responses.

ODFW Signature:  Print Name: ELISE KELLEY  
ODFW Title: DISTRICT FISH BIOLOGIST Date: 8/8/19

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

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Use this menu to identify appropriate conditions to be included in the permit, and indicate the abbreviations on the review form:

**fishpass:** As required by ORS 509.585, a person owning or operating an artificial obstruction (AO) may not construct or maintain any AO across any waters of this state that are inhabited, or historically inhabited, by native migratory fish (NMF) without providing passage for NMF. A person owning or operating an AO shall, prior to construction, fundamental change in permit status or abandonment of the AO in any waters of this state, obtain a determination from ODFW as to whether NMF are or historically have been present in the waters. If ODFW determines that NMF are or historically have been present in the waters, the person owning or operating the AO shall either submit a proposal for fish passage to ODFW or apply for a waiver or exemption. Approval of the proposed fish-passage facility, waiver, or exemption must be obtained from the department prior to construction, permit modification or abandonment of the AO. Approved fish-passage plans, waivers, and exemptions shall maintain adequate passage of NMF at all times (ORS 509.601) as per the approved plan, waiver or exemption.

**fishself:** The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional prior to diversion of any water. Permittee shall obtain written approval from ODFW that the installation of the required screen and by-pass devices meets the state's criteria or the permittee shall submit documentation that ODFW has determined screens and/or by-pass devices are not necessary.

**fishapprove:** The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.

**fishdiv33:** If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.

**fishmay:** Notwithstanding that ODFW has made a determination that fish screens and/or by-pass devices are not necessary at the time of permit issuance, the permittee may be required in the future to install, maintain, and operate fish screening and by-pass devices to prevent fish from entering the proposed diversion and to provide adequate upstream and downstream passage for fish.

**b52** Water may be diverted only when Department of Environmental Quality sediment standards are being met.

**b5** The water user shall install and maintain adequate treatment facilities meeting current DEQ requirements to remove sediment before returning the water to the stream.

**b51a** The period of use has been limited to \_\_\_\_\_ through \_\_\_\_\_.

**b57** Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point.

**b58** Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead-pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I.

**futile call:** The use of water allowed herein may be made only at times when waters from the (NAME OF SURFACE WATER) would not otherwise flow into a tributary of the \_\_\_\_\_ River or sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

**riparian:** If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

**wq:** The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

**fence:** The stream and its adjacent riparian area shall be fenced to exclude livestock.

**blv:** Water must be diverted to a trough or tank through an enclosed water delivery system. The delivery system must be equipped with an automatic shutoff or limiting flow control mechanism or include a means for returning water to the stream source through an enclosed delivery system. The use of water shall not exceed 0.10 cubic feet per second per 1000 head of livestock.

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# 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

Applicant: Corvallis Parks & Recreation Jon Pywell  
First Last

Mailing Address: 1320 SW Avery Park Drive  
Corvallis OR 97333 Daytime Phone: 541 754 1723  
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:
125	SW	22	NE/4	1200		<input checked="" type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	Open space
						<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:

## 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 to muddy creek

Estimated quantity of water needed: 2001  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 habitat veg control

Briefly describe:  

Run off will be held on site behind low berm to create an ephemeral swale that will improve habitat's reseed grass growth.

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. →

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# 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

## NOTE TO APPLICANTS

In order for your application to be processed by the Water Resources Department (WRD), this Land Use Information Form must be completed by a local government planning official in the jurisdiction(s) where your water right will be used and developed. The planning official may choose to complete the form while you wait, or return the receipt stub to you. Applications received by WRD without the Land Use Form or the receipt stub will be returned to you. Please be aware that your application will not be approved without land use approval.

**This form is NOT required if:**

- 1) Water is to be diverted, conveyed, and/or used only on federal lands; **OR**
- 2) The application is for a water right transfer, allocation of conserved water, exchange, permit amendment, or ground water registration modification, and all of the following apply:
  - a) The existing and proposed water use is located entirely within lands zoned for exclusive farm-use or within an irrigation district;
  - b) The application involves a change in place of use only;
  - c) The change does not involve the placement or modification of structures, including but not limited to water diversion, impoundment, distribution facilities, water wells and well houses; and
  - d) The application involves irrigation water uses only.

## NOTE TO LOCAL GOVERNMENTS

The person presenting the attached Land Use Information Form is applying for or modifying a water right. The Water Resources Department (WRD) requires its applicants to obtain land-use information to be sure the water rights do not result in land uses that are incompatible with your comprehensive plan. Please complete the form or detach the receipt stub and return it to the applicant for inclusion in their water right application. You will receive notice once the applicant formally submits his or her request to the WRD. The notice will give more information about WRD's water rights process and provide additional comment opportunities. You will have 30 days from the date of the notice to complete the land-use form and return it to the WRD. If no land-use information is received from you within that 30-day period, the WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan. Your attention to this request for information is greatly appreciated by the Water Resources Department. If you have any questions concerning this form, please contact the WRD's Customer Service Group at 503-986-0801.

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## 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	
Floodplain Development Permit	Benton County Development Code Chapter 83	<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.

Floodplain Development Permit (FPD/60088) approved on 8/15/16 for all four berms.

Name: Toby Lewis Title: Associate Planner, Floodplain Manager  
 Signature: Toby Lewis Phone: 541-716-6819 Date: 4/22/19  
 Government Entity: Benton County, Community Development Dept.

**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: \_\_\_\_\_

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After Recording Return To:  
The City Of Corvallis  
PO Box 1083  
Corvallis OR 97339

Send Tax Statements To:  
The City Of Corvallis  
PO Box 1083  
Corvallis OR 97339



Title Order No. 10-34954  
Escrow No. 10-34954

Tax Account No. 12516-00-01000  
A#165914  
12521-00-00700 A#166516  
12521-00-00700 A#296214  
12522-00-01200 A#373724

Key Title Co. 10-34954

**SPECIAL WARRANTY DEED**  
(ORS 93.855)

The Trust for Public Land, a non profit California corporation, Grantor, conveys and specially warrants to The City Of Corvallis, a Municipal corporation, Grantee the following described real property free of encumbrances created or suffered by the Grantor except as specifically set forth herein:

See Exhibit 'A' attached hereto and by reference made a part hereof.

THIS INSTRUMENT WILL 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 APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

The true consideration for this conveyance is \$775,000.00

Dated this 20 day of June, 2002

THE TRUST FOR PUBLIC LAND

By: Robert B. Betcone, Jr., Associate Regional Counsel

State of Oregon, County of Multnomah, ss.

This instrument was acknowledged before me on June 20, 2002 by Robert B. Betcone, Jr., as Associate Regional Counsel, of The Trust for Public Land.

S Rahman

My commission expires: Jan 30, 2006

Notary Public



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**EXHIBIT 'A'**Legal Description:

Parcel 2, Partition Plat No. 96-31, Benton County, Oregon, more specifically described as follows:

Beginning at a brass capped monument at the southwest corner of the Thomas P. Adams Donation Land Claim No. 48, Township 12 South, Range 5 West, Willamette Meridian; thence along the west line of said Claim N 0°25'00"W 828.49 feet to a 1" iron pipe; thence leaving said line S 89°59'28"W 1425.88 feet to a 3/4" iron pipe; thence N 0°00'32"W 1250 feet, more or less, to the center of the Mary's River; thence upstream along the centerline of said Mary's River to it's confluence with the centerline of Muddy Creek; thence upstream along the centerline of said Muddy Creek to the north line of the A. Rhinehart Donation Land Claim No. 73 in said Township and Range; thence along the north line of said Rhinehart Claim N 89°55'31"E 2137 feet, more or less, to a 5/8" iron rod at the southeast corner of the Hiram Allen Donation Land Claim No. 55 in said Township and Range; thence N 0°01'00"E 171.60 feet to a 3/4" iron pipe; thence N 89°57'40"E 2165.77 feet to a 5/8" iron rod on the east line of said Rhinehart Claim, also being the west line of Parcel 1 of said Partition Plat 96-31; thence along the line common to said Rhinehart Claim and said Parcel 1, N 0°12'07"E 1207.80 feet to a 5/8" iron rod at the northeast corner thereof; thence continuing along the west line of said Parcel 1, N 0°12'07"E 45.43 feet to a 5/8" iron rod on the southerly right-of-way line of County Road No. 25133 (SW Herbert Avenue); thence along said right-of-way line S 89°48'19"W 1418.08 feet to a 5/8" iron rod at the southwest corner thereof; thence N 0°11'41"W 30.00 feet to a 5/8" iron rod at the northwest corner of said right-of-way; thence along the north line thereof N 89°48' 19"E 30.00 feet to the point of beginning.

Subject to:

The assessment and tax rolls disclose that the premises herein described have been specifically assessed as Farm Use Land. If the land becomes disqualified for the special assessment under the statute, an additional tax may be levied for previous years in which the farm use assessment was in effect for the land and in addition thereof a penalty may be levied if notice of disqualification is not timely given.

The following matters are excluded from this Deed based on the proximity of the property to Muddy Creek.

- a. Rights of the public and governmental bodies (including claims of ownership) to that portion of the premises lying below the high water mark of Muddy Creek.
- b. Any adverse claim based on the assertion that:
  - i. Some portion of said land has been created by artificial means, or has accreted to such portion so created.
  - ii. Some portion of said land has been brought within the boundaries thereof by an avulsive movement of Muddy Creek or has been formed by accretion to such portion.

The following matters are excluded from this Deed based on the proximity of the property to Mary's River.

- a. Rights of the public and governmental bodies (including claims of ownership) to that portion of the premises lying below the high water mark of Mary's River.
- b. Any adverse claim based on the assertion that:
  - i. Some portion of said land has been created by artificial means, or has accreted to such portion so created.
  - ii. Some portion of said land has been brought within the boundaries thereof by an avulsive movement of Mary's River or has been formed by accretion to such portion.

The rights of the public in and to that portion of the premises herein described lying within the limits of public roads, streets and highways.

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An Easement created by instrument, including the terms and provisions thereof,  
In favor of: F.W. Jordan and Lota M. Jordan, and their heirs and assigns  
For: a road by gateway forever thirty feet wide  
Dated: June 13, 1912  
Recorded: October 31, 1912  
Book: 56 Page: 240  
in Benton County, Oregon.

Encroachment of Fenceline onto said premises on the boudary lines as disclosed by survey by Northstar Surveying, Inc. dated April 26, 2002.

Encroachment of gravel road onto said premises on the northwesterly boundary as disclosed by survey by Northstar Surveying, Inc. dated April 26, 2002.

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ACCEPTANCE OF SPECIAL WARRANTY DEED

The City of Corvallis, a municipal corporation, hereby accepts this Special Warranty Deed from The Trust for Public Land conveying fee title to the property described herein.

For City of Corvallis,  
an Oregon municipal corporation:

Jon S. Nelson  
by Jon S. Nelson, City Manager

Dated: 6/24/02

ATTEST:

Emily Day  
City Recorder

APPROVED AS TO FORM:

[Signature]  
City Attorney

Seal of the City of Corvallis, Oregon:



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STATE OF OREGON } SS.  
County of Benton

320163

P1 3:54 '02 JUN 24

I hereby certify that the within  
instrument was received for record

M320434 20 02

In the records of said county

Witness My Hand and Seal of  
James V. Morales, County Clerk

By [Signature]  
Deputy  
41  
15  
4



**POLICY OF TITLE INSURANCE**

38 0842 106 00004028

**CHICAGO TITLE INSURANCE COMPANY OF OREGON**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, CHICAGO TITLE INSURANCE COMPANY OF OREGON, an Oregon corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

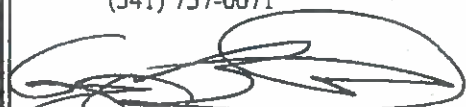
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**CHICAGO TITLE INSURANCE COMPANY OF OREGON**

Issued by:  
KEY TITLE COMPANY  
P.O. BOX 338  
456 SW MONROE  
SUITE 108  
CORVALLIS, OR 97330  
(541) 757-0071

  
.....  
Authorized Signature

ALTA OWNER'S POLICY (10-17-92)



By:

  
President

By:

  
Secretary

## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

## CONDITIONS AND STIPULATIONS

### 1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.
- (b) "insured claimant": an insured claiming loss or damage.
- (c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.
- (d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
- (e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a) (iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.
- (g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

### 2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable.

If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

### 4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

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**5. PROOF OF LOSS OR DAMAGE**

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

**6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the following additional options:

**(a) To Pay or Tender Payment of the Amount of Insurance.**

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

**(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.**

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

**7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the

amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

**8. APPORTIONMENT**

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

**9. LIMITATION OF LIABILITY**

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

**10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

**11. LIABILITY NONCUMULATIVE**

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

**12. PAYMENT OF LOSS**

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

**13. SUBROGATION UPON PAYMENT OR SETTLEMENT**

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

**(b) The Company's Rights Against Non-insured Obligors.**

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

**14. ARBITRATION**

Unless prohibited by applicable law, either the Company or the Insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the Insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

**16. SEVERABILITY**

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

**17. NOTICES, WHERE SENT**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at:

Chicago Title Insurance Company of Oregon  
Claims Department  
P.O. Box 218  
Portland, Oregon 97207

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**SCHEDULE A**

AMOUNT: \$775,000.00

DATE: June 24, 2002  
At: 3:54 p.m.

PREMIUM: \$2,555.63

POLICY NUMBER: 38 0842 106 00004028

**1. NAME OF INSURED:**

The City Of Corvallis, a Municipal corporation

**2. THE ESTATE OR INTEREST IN THE LAND WHICH IS COVERED BY THIS POLICY IS:**

Fee.

**3. TITLE TO THE ESTATE OR INTEREST IN THE LAND IS VESTED IN:**

The City Of Corvallis, a Municipal corporation

**4. THE LAND REFERRED TO IN THIS POLICY IS DESCRIBED AS:**

Parcel 2, Partition Plat No.96-31, in Benton County, Oregon, which is further described as follows:

Beginning at a 1 1/4 inch pipe at the Southwest corner of the Thomas P. Adams Donation Land Claim No. 48, Township 12 South, Range 5 West of the Willamette Meridian, and running West 33.50 chains to a 1 1/4 inch pipe on the bank of Muddy Creek;  
Thence South 0.40 of a chain to the center of said creek;  
Thence with the meanders of said creek down the center of said creek to Mary's River;  
Thence down the center of Mary's River to a point 0.74 of a chain West of a 1 1/4 inch steel shaft;  
Thence East 44.14 chains to a 1 inch pipe on the West line of said Claim;  
Thence South 0°25' East 12.552 chains to the place of beginning.

Also that property described as beginning at a 1 1/4 inch pipe on the West line 26.856 chains North 0° 25' West of the Southwest corner of the Thomas P. Adams Donation Land Claim No. 48, which pipe is 9.09 chains North 0° 25' West of the Southeast corner of Lot No. 3, Section 15, Township 12 South, Range 5 West of the Willamette Meridian;  
Thence South 0°25' East 14.304 chains along the west line of said claim to a 1 inch pipe;  
Thence West 44.14 chains to the center of Mary's River;  
Thence with the meanders down the center of said river to a point 6.10 chains West of the place of beginning;  
Thence East 6.10 chains to the place of beginning;

Also that property described as beginning in the middle of the state road at the Northeast corner of the tract of land sold to J.A. Hanna by Harvey Young recorded in Book E of the Records of Deeds in Benton County, Oregon, at Page 357 thereof;

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**OWRD**

Order No. 10-34954

Thence West along the North line of that parcel described in said Book and Page, 118 chains and 80 links more or less, to the center of Muddy Creek which point is the True Point of Beginning;  
Thence following the meanders of said creek to the North line of A. Rhinehart's Donation Land Claim No.73 in Township 12 South, Range 5 West;  
Thence East 26 chains;  
Thence North 2.60 chains;  
Thence East 32.80 chains to the West line of Parcel 1, Partition Plat 96-31;  
Thence North along the West line of said Parcel 1 1255.43 feet to the North line of that parcel described in Book E, Page 357 of the Deed Records;  
Thence West along said North line of that parcel described in said Book and Page to the True Point of Beginning of this description;

Excepting from the above parcels of land that portion described as follows:  
Beginning at a 1 1/4 inch pipe on the West line 26.856 chains North 0°25' West of the Southwest corner of the Thomas P. Adams Donation Land Claim No. 48, Township 12 South, Range 5 West of the Willamette Meridian;  
Thence South 0°25' East 14.304 chains to a 1 inch pipe on the West line of said Claim West 21.605 chains to a point 4.233 chains West of a 3/4 inch pipe;  
Thence North 18.35 chains to the center of Mary's River;  
Thence with the meanders down the center of said river to a point 6.10 chains West of the place of beginning;  
Thence East 6.10 chains to the place to the place of beginning.

Also Excepting from the above parcels of land any portion lying with the rights of way deeded to the Oregon and California Railroad company, the Corvallis and Aisea River Railway Company, and the Southern Pacific Railroad.

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**SCHEDULE B**

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. The assessment and tax rolls disclose that the premises herein described have been specifically assessed as Farm Use Land. If the land becomes disqualified for the special assessment under the statute, an additional tax may be levied for previous years in which the farm use assessment was in effect for the land and in addition thereof a penalty may be levied if notice of disqualification is not timely given.
2. The following matters are excluded from the coverage of the policy based on the proximity of the property to Muddy Creek.
  - a. Rights of the public and governmental bodies (including claims of ownership) to that portion of the premises lying below the high water mark of Muddy Creek.
  - b. Any adverse claim based on the assertion that:
    - i. Some portion of said land has been created by artificial means, or has accreted to such portion so created.
    - ii. Some portion of said land has been brought within the boundaries thereof by an avulsive movement of Muddy Creek or has been formed by accretion to such portion.
3. The following matters are excluded from the coverage of the policy based on the proximity of the property to Mary's River.
  - a. Rights of the public and governmental bodies (including claims of ownership) to that portion of the premises lying below the high water mark of Mary's River.
  - b. Any adverse claim based on the assertion that:
    - i. Some portion of said land has been created by artificial means, or has accreted to such portion so created.
    - ii. Some portion of said land has been brought within the boundaries thereof by an avulsive movement of Mary's River or has been formed by accretion to such portion.
4. The rights of the public in and to that portion of the premises herein described lying within the limits of public roads, streets and highways.
5. An Easement created by instrument, including the terms and provisions thereof,  
In favor of: F.W. Jordan and Lota M. Jordan, and their heirs and assigns  
For: a road by gateway forever thirty feet wide  
Dated: June 13, 1912  
Recorded: October 31, 1912  
Book: 56 Page: 240  
In Benton County, Oregon.
6. Encroachment of Fence line onto said premises on the boundary lines as disclosed by survey by Northstar Surveying, Inc. dated April 26, 2002.
7. Encroachment of gravel road onto said premises on the northwesterly boundary as disclosed by survey by Northstar Surveying, Inc. dated April 26, 2002.

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Order No. 10-34954

**END OF EXCEPTIONS**

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**MAR 20 2020**  
**OWRD**

## OWNER'S INFLATION PROTECTION ENDORSEMENT

Attached to Policy No. 38 0842 106 00004028

Dated: June 24, 2002 at 3:54 p.m.

Premium: \$0.00

The Company, recognizing the current effect of inflation on real property valuation and intending to provide additional monetary protection to the insured owner named in the policy, hereby modifies the policy as follows:

1. notwithstanding anything contained in the policy to the contrary, the amount of insurance provided by the policy, as stated in Schedule A thereof, is subject to cumulative annual upward adjustments in the manner and to the extent hereinafter specified;
2. "adjustment date" is defined, for the purposes of this endorsement, to be 12:01 a.m. on the first January 1 which occurs more than six months after the Date of Policy, as shown in Schedule A of the policy to which this endorsement is attached and on each succeeding January 1;
3. an upward adjustment will be made on each of the adjustment dates, as defined above, by increasing the maximum of insurance provided by the policy by 10% (ten percent) per year for 5 (five) years; provided, however, that the maximum amount of insurance in force shall never exceed 150% of the amount of insurance stated in Schedule A of the policy, less the amount of any claim paid under the policy which, under the terms of the conditions and stipulations, reduces the amount of insurance in force;
4. in the settlement of any claim against the Company under the policy, the amount of insurance in force shall be deemed to be the amount which is in force as of the date on which the insured claimant first learned of the assertion or possible assertion of such claim, or as of the date of receipt by the Company of the first notice of the claim, whichever shall first occur.

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements.

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Endorsement No. 78

**Applicant**

Jon Pywell  
 City of Corvallis  
 Parks and Recreation  
 1320 SW Avery Park Drive, Corvallis OR 97333  
 541-754-1723  
 Jonathan.pywell@corvallisoregon.gov

**Type of obstruction:** 1' berm established in 2017

**Background**

Herbert Farm and Natural Area (HFNA) is a 221 acre property in Benton County, owned by the City of Corvallis, with an Oregon Department of Fish and Wildlife conservation easement that preserves and protects the conservation values of the property in perpetuity as a Bonneville Power Administration mitigation site for the Willamette Basin federal hydro-electric dams and reservoirs. The property is bordered by the Marys River and Muddy Creek and has remnant flood channels and swales that were formed by the rivers during previous floods. The primary site mission is to protect and restore existing high quality native prairie, savanna, oak woodland, riparian areas, and their associated rare species and wildlife habitat including the creation of Streaked Horn Lark nesting habitat via the creation of four shallow ponds. The ponds exist only during the winter and the water source is runoff and floodwaters from Muddy Creek when it breaches its banks (it does not do so every year).

**Fish Presence**

In two sections of the property, called Herbert 2 and Herbert 4 (see Figure 1 below), there are intermittent streams just below the ponds which are tributaries to Muddy Creek. The areas labelled Herbert 1 and 2 become connected when there is sufficient overland flow and flooding. Herbert 1, 2, and 4 were sampled in 2017 and a native migratory whitefish was found in Herbert 1. There is no outlet for Herbert 1 other than the intermittent stream at Herbert 2. No native migratory fish were found in Herbert 4 which is not surprising since it is a much shallower and less well defined tributary than the one at Herbert 2.

**Fish Passage Plan**

Fish passage will be created at Herbert 2 to permit fish migration out of Herbert 1 and 2 and into the tributary to Muddy Creek. No fish passage is required at Herbert 4. Fish passage at Herbert 2 will consist of a defined channel (3-4' wide, 10-12" deep), rocked with gravel (preferably rounded) from the connection with the pond to approximately halfway towards the road culvert/outlet for Herbert 2 (see Figure 2). This channel and rock should provide sufficient signal for any fish that that remain in Herbert 2 to leave as the water begins to drop. This plan meets both the need to create a good signal for fish as well as to preserve the creation of nesting habitat for Streaked Horned Larks.

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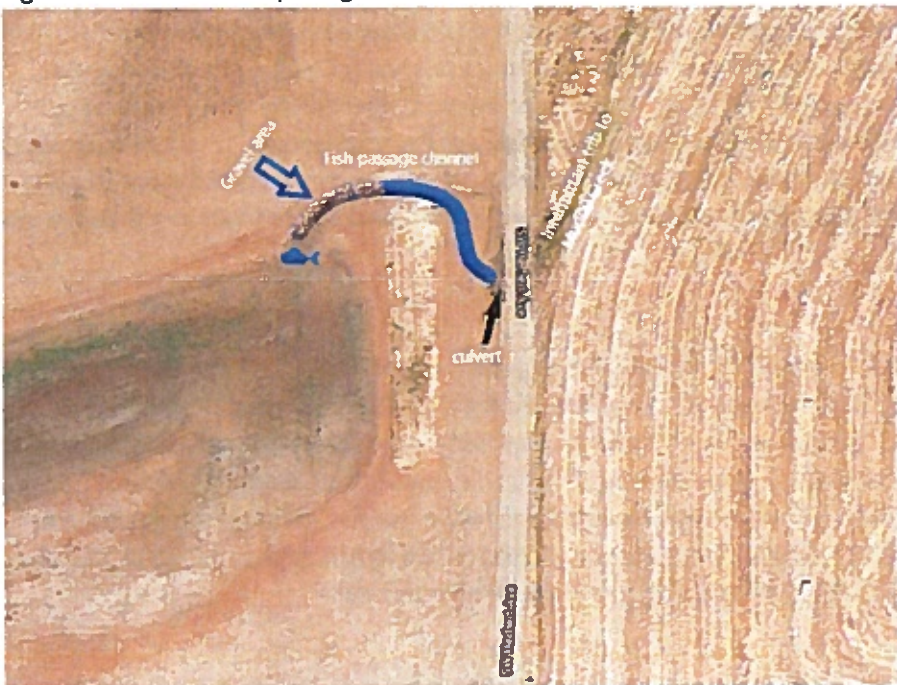
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Figure 1. Map of shallow ponding areas at Herbert Farm and Natural Area.



Figure 2: Herbert 2 fish passage



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# Proposal to Create Streaked Horned Lark habitat by Flooding Swales at Herbert Farm and Natural Area

Nate Richardson (USFWS) and Peter Moore (Institute for Applied Ecology)

August 2015

## Background

Herbert Farm and Natural Area (HFNA) is a 221 acre property in Benton County, owned by the City of Corvallis, with an Oregon Department of Fish and Wildlife conservation easement that preserves and protects the conservation values of the property in perpetuity as a Bonneville Power Administration mitigation site for the Willamette Basin federal hydro-electric dams and reservoirs. The property is bordered by Marys River and Muddy Creek and has remnant flood channels and swales that were formed by the rivers during previous floods. Farming is gradually being phased out in favor of restored natural areas, as outlined in the Management Plan (City of Corvallis 2011). The primary site mission is to protect and restore existing high quality native prairie, savanna, oak woodland, riparian areas, and their associated rare species and wildlife habitat.

A Phase I restoration plan (IAE 2013a) was prepared for areas west of Matt Creek, and restoration commenced in 2012. Phase II restoration plan, for areas east of Matt and Muddy Creeks, is in preparation. Two projects are commencing in 2015 in this area (Fig. 1). Firstly, an experiment funded by USFWS to evaluate the creation of streaked horned lark habitat will compare combinations of herbicide, disking and mowing along the roadside of Herbert Avenue (and possibly along the eastern property boundary), and monitor the population response. A State Wildlife Grant project proposes to restore 25 acres of agriculture to native prairie habitat for the benefit of streaked horned lark and Western pond turtle.

## Streaked Horned Lark

The streaked horned lark (Fig. 2) was federally listed as threatened in 2013 due to its declining numbers and shrinking range. Larks are occasionally recorded at HFNA, which is within one mile of Oregon's largest lark population, at Corvallis Municipal Airport. Larks have nested along Herbert Avenue (Pacific Wildlife Research 2007, City of Corvallis 2011), and another favored area is a seasonally inundated swale on the eastern part of the property (R. Moore, Oregon State University, pers. comm. 2014). Most occupied sites in the Willamette Valley are >100 acres in size, relatively flat, have no trees or buildings interrupting the landscape, and have large habitat patches dominated by short-stature grasses, forbs and bare ground (Anderson & Pearson 2015). Although, generally considered too small for larks, site preparation and early stage restoration of the 37 acre Phase I prairie attracted a pair of larks in 2014 (B. Altman, pers. comm.) and 2015 (Fig. 2). A focus of Phase II restoration is to create improved opportunities for streaked horned lark and other grassland birds. With over 100 acres of restored prairie potentially targeted towards larks at HFNA, and additional open farmed landscape and wetland swales adjacent to the area, further larks may be attracted to the site.

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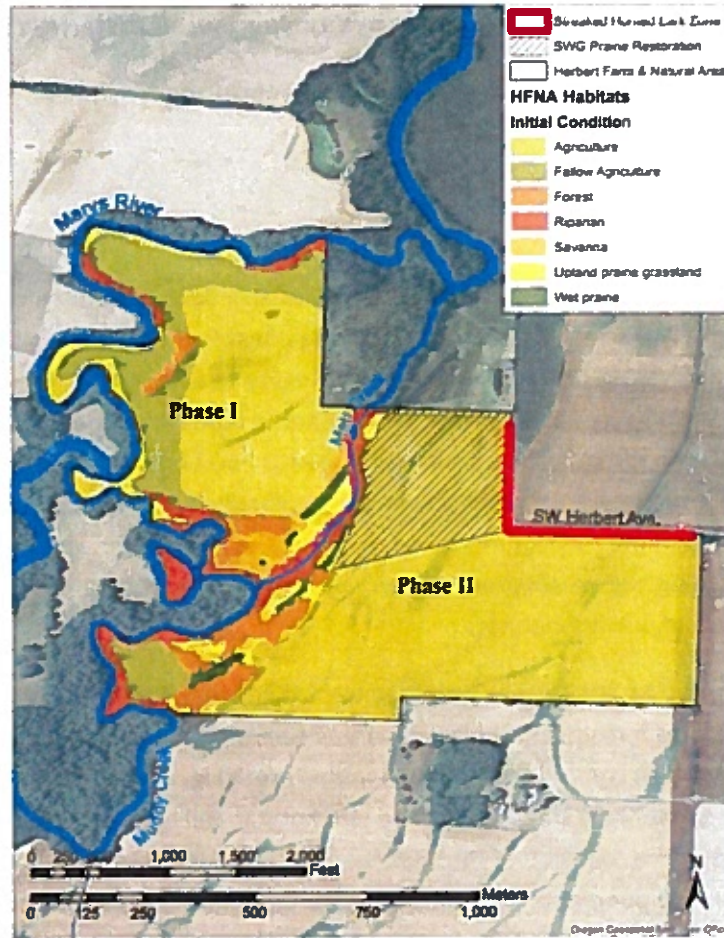


Figure 1. Phase I and II restoration areas of Herbert Farm and Natural Area. Also shown are current restoration projects in the Phase II area: streaked horned lark experimental habitat creation along Herbert Avenue (bold red line) and a 25 acre State Wildlife Grant project (cross-hatch area).



Figure 2. Streaked horned lark at Herbert Farm in 2015.

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A challenge of grassland restoration is that as vegetation matures and bare ground decreases, habitat tends to become less suitable for larks (Moore 2011). A potential way of slowing, or halting plant succession, without regular use of mowing, herbicides, disking, or prescribed fire is to flood existing wetland swales. This proposal outlines the scraping of earth from limited areas to create dykes that will hold water in wetland swales for longer periods each season.

An archaeological survey was conducted in 2014/15 to document the presence and distribution of cultural resources at HFNA and the potential impacts of restoration actions on those resources, to satisfy the requirements of Section 106 of the National Historic Preservation Act (1966). Based on initial survey data, and consultation with Native American tribes, BPA gave permission in February 2015 for actions such as seed drilling, tree planting and tree thinning in the Phase I restoration area. After consultation on the final archaeological report (Roulette et al. 2015), BPA gave permission to proceed with Phase II restoration. The scope of work for the archaeological investigation, however, did not include any scraping or shifting of material. It is anticipated that an additional assessment of the potential impacts to cultural resources of the proposed work will be necessary.

**Scope of Work**

The proposed work would include excavating to a depth of 6 inches to no more than 1 foot in four small areas, totaling 1.7 acres in extent (Table 1, Fig. 3). Total amount of soil to be moved would be approximately 672 cubic yards. Created berms would be 6 inches to 1 foot in height and 25 to 40 feet wide respectively (Table 2, Figs 3- 4). All newly constructed berms will be compacted with a 72,000 thousand pound Caterpillar 623 or 615 scraper during construction. In addition to the 6 inches to 1 foot of compacted fill the berms will have 3-6 inches of organic material to allow berm to re-vegetate with native grasses post construction. The depth and compaction of the berms will cause water to be held in the swales for longer and at a greater depth than previously. This would create an additional 6.7 acres of seasonally inundated wetland with a maximum depth of 6 inches to 1 foot (Fig. 4). The berms will be constructed with spillways that will allow water to move around the berms once they reach full pool in the winter. Water would then move as it has in the past through a culvert and off the site.

Table 1. Proposed dimensions of four excavation areas, and amount of fill created for the dikes at Herbert Farm and Natural Area.

<b>Cubic yards fill</b>	672
<b>Impact area acres</b>	1.7
<b>Impact area length</b>	474.0
<b>Impact area width</b>	153.1
<b>Impact area depth</b>	0.25

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Table 2. Proposed dimensions of four dykes at Herbert Farm and Natural Area.

Fill	Length (feet)	Width (feet)	Height (feet)	Square feet	Acres	Cubic feet	Cubic yards
1	155.0	40.0	1.0	6200.0	0.1	6200.0	229.6
2	168.0	40.0	1.0	6720.0	0.2	6720.0	248.9
3	121.0	40.0	1.0	4840.0	0.1	4840.0	179.3
4	30.0	25.0	0.5	750.0	0.0	375.0	13.9
<b>Total</b>	<b>474.0</b>	<b>145.0</b>		<b>18510.0</b>	<b>0.4</b>	<b>18135.0</b>	<b>672</b>

Work would be conducted by US Fish and Wildlife Service's Partners for Fish and Wildlife Program, based at the Willamette Valley National Wildlife Refuge Complex.

Equipment: The main equipment to be used would be a Caterpillar 623 or 615 tractor-scraper.

Schedule: All work would occur in summer months when soil moisture is low to allow heavy equipment to operate. Anticipated start date is 2016, in order to coincide with, or occur before other site preparation activities. If necessary, only the two northern dykes would be constructed in 2016, as these occur in the 25 acre State Wildlife Grant project area. Farming may continue in the southern Phase II restoration area in 2016, in which case dyke construction would be deferred.

Permits required: Department of State Lands General Authorization for Wetland Ecosystem Restoration. [http://www.oregon.gov/dsl/permits/Pages/ga\\_intro.aspx](http://www.oregon.gov/dsl/permits/Pages/ga_intro.aspx)

Vegetation restoration: Associated with other projects.

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# Herbert Farms Inundation Map

