

Application for a Permit to  
**Store Water in a Reservoir**  
 Alternate Review (ORS 537.409)



**Oregon Water Resources Department**  
 725 Summer Street NE, Suite A  
 Salem, Oregon 97301-1266  
 (503) 986-0900  
 www.oregon.gov/OWRD

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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

**SECTION 1: APPLICANT INFORMATION AND SIGNATURE**

**Applicant**

NAME Frank Foti		PHONE (HM) 503-819-3000	
PHONE (WK)	CELL		FAX
ADDRESS 17405 NW Panther Creek Rd			
CITY Carlton	STATE OR	ZIP 97111	E-MAIL * Frank.Foti@ evolution.love

**Organization**

NAME HOB LLC		PHONE 866-213-3136	FAX
ADDRESS 15990 NW Redshot Ln			CELL
CITY Carlton	STATE OR	ZIP 97111	E-MAIL * Frank.Foti@ evolution.love

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

AGENT / BUSINESS NAME Kellan Lancaster		PHONE 971-201-0256	FAX
ADDRESS 15990 NW Redshot Ln			CELL
CITY Carlton	STATE OR	ZIP 97111	E-MAIL * kellan.lancaster@ evolution.love

Note: Attach multiple copies as needed

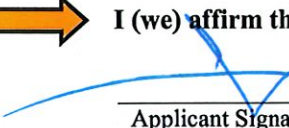
\* By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (paper copies of the final order documents will also be mailed.)

**By my signature below I confirm that I understand:**

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application.
- I cannot legally store water until the Water Resources Department issues a permit.
- Oregon law requires that a permit be issued before beginning construction. Acceptance of this application does not guarantee a permit will be issued.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be cancelled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water right holders to get water to which they are entitled.



**I (we) affirm that the information contained in this application is true and accurate.**

	Frank Foti, Manager	3/31/21
Applicant Signature	Print Name and Title if applicable	Date
Applicant Signature	Print Name and Title if applicable	Date

**SECTION 2: SOURCE OF WATER AND LOCATION OF RESERVOIR**

<b>Reservoir name:</b>	Zach Attack Reservoir				
<b>Source*:</b> run-off	<b>Tributary:</b>		Panther Creek		
<b>County:</b>	Yamhill				
<b>Quantity:</b> 6.0	<b>Acre-Feet</b> [length x width x depth / 43,560]				
<b>Reservoir Location:</b>	<b>Township (N or S)</b>	<b>Range (E or W)</b>	<b>Section</b>	<b>Quarter-Quarter</b>	<b>Tax Lot #</b>
	3S	5W	22	NW-SW	1700
<b>Maximum Height of Dam:</b>	feet. If excavated write "zero feet." 8'				

\* 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, an unnamed stream, or spring.

**SECTION 3: WATER USE**

Indicate the proposed use(s) of the stored water: Multi-purpose

**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: stock water, fish and wildlife, aesthetics, domestic, irrigation, agriculture, fire protection and pollution abatement.

**SECTION 4: PROPERTY OWNERSHIP**

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:

---

**SECTION 5: ENVIRONMENTAL IMPACT**

**Channel:** Is the Reservoir:  in-stream or  off channel?

**Wetland:** Is the project in a wetland?  YES  NO  unknown

**Existing:** Is this an existing reservoir?  YES  NO

If YES, how long has it been in place? \_\_\_\_\_ years.

**Fish Habitat:** Is there a fish habitat upstream of the proposed structure?  YES  NO  unknown

If YES, how much? \_\_\_\_\_ miles.

**Existing:** 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.

**SECTION 6: 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:		Address:	
City:	State:	Zip:	

**SECTION 7: DESCRIPTION**

Provide a short 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.

The applicant is not proposing to divert water from a defined channel or stream and therefore no diversion structure is proposed. The pond is designed to retain seasonal runoff to rehydrate the pasture for agricultural use and environmental habitat. The pond is designed to store excess water from winter rains and improve water quality while reducing erosion.

If the diversion involves a dam, use this space below 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).

While this reservoir involves a dam, the dam will not be constructed in a defined channel or stream and therefore passage of live flow does not apply to this application.



**First American**

*First American Title Insurance Company*

775 NE Evans Street  
McMinnville, OR 97128  
Phn - (503)376-7363  
Fax - (866)800-7294

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**YAMHILL COUNTY TITLE UNIT**  
FAX (866)800-7294

Title Officer: Clayton Carter  
(503)376-7363  
ctcarter@firstam.com

**LOT BOOK SERVICE**

AKS Engineering & Forestry LLC  
12965 SW Herman Road, Suite 100  
Tualatin, OR 97062

Order No.: 1039-3596017  
November 16, 2020

Attn: Michael Kalina  
Phone No.: (503)563-6151 - Fax No.: (503)563-6152  
Email: mikek@aks-eng.com

Re:

Fee: \$300

We have searched our Tract Indices as to the following described property:

The land referred to in this report is described in Exhibit A attached hereto.

and as of November 10, 2020 at 8:00 a.m.

We find that the last deed of record runs to

The Von Family Limited Partnership

We find the following apparent encumbrances within ten (10) years prior to the effective date hereof:

1. Taxes for the year 2019-2020

Tax Amount	\$	1,085.43
Unpaid Balance:	\$	1,085.43, plus interest and penalties, if any
Code No.:	11.4	
Map & Tax Lot No.:	M00285798	
Property ID No.:	506458	
(Affects Mobile Home)		
  
2. The assessment roll and the tax roll disclose that the within described premises were specially zoned or classified for Farm use. If the land has become or becomes disqualified for such use under the statute, an additional tax or penalty may be imposed.

3. The assessment roll and the tax roll disclose that the premises herein described were specially assessed as Forest Land pursuant to O.R.S. 321.358 to 321.372. If the land becomes disqualified for the special assessment under the statute, an additional tax may be levied for the last five (5) or lesser number of years in which the land was subject to the special land assessment.
4. Taxes for the current fiscal year are reduced by reason of veterans Exemption. If the exempt status is terminated under the statute prior to July 1, said property will be taxed at 100% of the assessed value.  
(Affects Mobile Home No. M00285798)
5. The county tax roll discloses a mobile home on the herein described premises which is not included in title insurance coverage. Subject to requirements and provisions of O.R.S. 311.280 pertaining to mobile home taxes becoming liens on real property.
6. The rights of the public in and to that portion of the premises herein described lying within the limits of streets, roads and highways.
7. Rights of the public and of governmental bodies in and to that portion of the premises herein described lying below the high water mark of Panther Creek.
8. Governmental rights in connection with flood control and propagation of anadromous fish and public rights of fishing and recreational navigation in and to the water, bed and shoreline of the Panther Creek.
9. Any adverse claim based upon the assertion that some portion of said land has been removed from or brought within the boundaries thereof by an avulsive movement of the Panther Creek or has been formed by the process of accretion or reliction or has been created by artificial means or has accreted to such portion so created.
10. Easement, including terms and provisions contained therein:  
Recording Information: June 22, 1965 in Film [Volume 46, Page 72](#)  
In Favor of: Portland General Electric Company  
For: Distribution line
11. Easement in deed, including terms and provisions contained therein:  
Recording Information: December 27, 1979 in Film [Volume 147, Page 45](#)  
For: Ingress and egress  
  
Also in deed recorded March 29, 1984 in Film [Volume 184, Page 1967](#).
12. Easement in deed, including terms and provisions contained therein:  
Recording Information: December 27, 1979 in Film [Volume 147, Page 48](#)  
For: Ingress and egress  
  
Also in deed recorded December 30, 1980 in Film [Volume 157, Page 1298](#).
13. Easement, including terms and provisions contained therein:  
Recording Information: June 15, 1981 in Film [Volume 161, Page 1555](#)  
For: water pipeline  
  
Modification to easement recorded September 27, 1985 in Film [Volume 197, Page 2087](#).

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- 14. Easement, including terms and provisions contained therein:  
 Recording Information: October 7, 1993 in Film [Volume 295, Page 806](#), Deed and  
 Mortgage Records  
 For: ingress and egress
  
- 15. Easement and Maintenance Agreement, including terms and provisions contained therein:  
 Recording Information: December 8, 2004 as Instrument No. [200424885](#)  
 For: Ingress, egress and utilities
  
- 16. Water Supply Agreement in deed, including terms and provisions thereof.  
 Recorded: December 6, 2011 as Instrument No. [201115756](#)
  
- 17. Easement and Maintenance Agreement and the terms and conditions thereof:  
 Between: Von Family Limited Partnership/Von Heritage Enterprises,  
 LLC  
 And: Cindy Von  
 Recording Information: May 18, 2020 as Instrument No. [202007917](#)
  
- 18. Easement and Maintenance Agreement and the terms and conditions thereof:  
 Between: Cindy Von  
 And: Von Family Limited Partnership/Von Heritage Enterprises,  
 LLC  
 Recording Information: May 18, 2020 as Instrument No. [202007918](#)

We have also searched our General Index for Judgments and State and Federal Liens against the Grantee(s) named above and find:

NONE

We find the following unpaid taxes and city liens:

NOTE: Taxes for the year 2020-2021 PAID IN FULL

Tax Amount: \$739.60  
 Map No.: R3522-01700  
 Property ID: 103257  
 Tax Code No.: 11.4

NOTE: Taxes for the year 2020-2021 PAID IN FULL

Tax Amount: \$2,020.22  
 Map No.: R3522-01700  
 Property ID: 712704  
 Tax Code No.: 11.1

NOTE: Taxes for the year 2020-2021 PAID IN FULL

Tax Amount: \$345.53  
 Map No.: R3522-01700  
 Property ID: 642307  
 Tax Code No.: 40.5

THIS IS NOT a title report since no examination has been made of the title to the above described property. Our search for apparent encumbrances was limited to our Tract Indices, and therefore above listings do not include additional matters which might have been disclosed by an examination of the

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record title. We assume no liability in connection with this Lot Book Service and will not be responsible for errors or omissions therein. The charge for this service will not include supplemental reports, rechecks or other services.

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**Exhibit "A"****RECEIVED****MAY 19 2021**

Real property in the County of Yamhill, State of Oregon, described as follows:

**PARCEL 1****OWRD**

Beginning at an iron pipe on the South boundary of the James Shaw Donation Land Claim, Notification No. 2202, Claim No. 46 in Township 3 South, Range 5 West of the Willamette Meridian in Yamhill County, Oregon, 15.03 chains North and 7.05 chains West of the Southeast corner of Section 21 in Township 3 South, Range 5 West of the Willamette Meridian in said Yamhill County, Oregon; thence East on South boundary of said James Shaw Donation Land Claim, 31.80 chains set stake in center of County Road; thence North  $21\frac{1}{2}^{\circ}$  East, 0.32 $\frac{1}{2}$  chains set stake in center of County Road; thence West 5.19 chains set stake; thence North  $30^{\circ}$  West, 2.13 chains set stake; thence North  $77^{\circ}$  West, 1.95 chains to center of Panther Creek; thence up Panther Creek as follows: North  $61^{\circ}30'$  West, 12.20 chains; North  $80^{\circ}22'$  West, 11.20 chains; thence South  $11^{\circ}25'$  West up small ditch, 10.40 chains to the place of beginning.

ALSO: Lots 6 and 7 of Section 21 and the North half of the Northeast Quarter of Section 28 in Township 3 South, Range 5 West of the Willamette Meridian in Yamhill County, Oregon.

ALSO TOGETHER WITH that portion conveyed in Corrected Lot Line Adjustment Deed recorded May 18, 2020 as Instrument No. 202007915, more particularly described as follows:

A tract of land located in Section 21, Township 3 South, Range 5 West of the Willamette Meridian in Yamhill County, Oregon, said tract of land being more particularly described as follows:

Commencing at the southeast corner of said Section 21; thence North  $00^{\circ}10'18''$  West 938.65 feet along the east line of said Section 21 to an iron rod on the south line of the James Shaw Donation Land Claim No. 46, said Township and Range; thence North  $89^{\circ}54'35''$  West 465.30 feet along said south line of said Claim to the POINT OF BEGINNING; thence North  $89^{\circ}54'35''$  West 531.92 feet to an iron rod on said south line; thence leaving said south line North  $00^{\circ}03'25''$  East 80.73 feet to an iron rod; thence North  $89^{\circ}31'05''$  East 549.48 feet to an iron rod marking a point on the west line of that certain tract of land conveyed to L. L. Goforth and Jamie L. Goforth, by deed recorded October 9' 1943, in Book 122 Page 569, Deed Records, Yamhill County, Oregon; thence South  $11^{\circ}33'16''$  West 87.97 feet along said west line to the POINT OF THE BEGINNING and containing 1.03 acres of land, more or less, as shown on CS-13393.

EXCEPTING THEREFROM that portion conveyed in deeds recorded December 27, 1979 in Film Volume 147, Page 45 and March 29, 1984 in Film [Volume 184, Page 1967](#), Yamhill County Deed Records, being further described as follows:

A parcel of land located in the Southeast one quarter of Section 21 and the Northeast one quarter of Section 28, Township 3 South, Range 5 West of the Willamette Meridian, Yamhill County, Oregon, said parcel of land being more particularly described as follows:

Beginning at the Northeast corner of said Section 28; thence West along the Northerly line of said Section 28 a distance of 430.00 feet to the true point of beginning of the parcel of land herein described; thence South, parallel with and 430.00 feet Westerly of the Easterly line of said Section 28 a distance of 250.00 feet; thence West, parallel with and 250.00 feet Southerly of the Northerly line of said Section 28 a distance of 1740.00 feet; thence South parallel with the Easterly line of said Section 28 a distance of 1000.00 feet; thence West, parallel with the Northerly line of said Section 28 a distance of 510.00 feet; thence North, parallel with the Easterly lines of Section 28 and said Section 21 a distance of 1550.00 feet to a point that is 300.00 feet Northerly of, when measured at right angles to, the Southerly line of said Section 21; thence Easterly, parallel with and 300.00 feet Northerly of said Southerly line a distance of



2250.00 feet more or less to a point on the Easterly line a distance of 300.00 feet to the true point of beginning.

FURTHER EXCEPTING THEREFROM that portion conveyed in deeds recorded December 27, 1979 in Film [Volume 147, Page 48](#) and December 30, 1980 in Film [Volume 157, Page 1298](#), Yamhill County Deed Records, being further described as follows:

A parcel of land located in the Northwest one quarter of Section 27 and the Northeast one quarter of Section 28, Township 3 South, Range 5 West of the Willamette Meridian, Yamhill County, Oregon, said parcel of land being more particularly described as follows:

All of the Northwest one quarter of the Northwest one quarter of said Section 27 and a parcel of land in the Northeast one quarter of Section 28 described as follows:

Beginning at the Northeast corner of said Section 28, thence South along the Easterly line of said Section 28 a distance of 600.00 feet; thence West, parallel with the Northerly line of said Section 28 a distance of 450.00 feet more or less to a point on the centerline of the meandering of said creek; thence Northeasterly following the centerline of the meandering of said creek to a point on the Northerly line a distance of 250.00 feet more or less to the point of beginning.

ALSO EXCEPTING that portion conveyed in Corrected Lot Line Adjustment deed recorded May 18, 2020 as Instrument No. 202007916, more particularly described as follows:

A tract of land located in Section 21, Township 3 South, Range 5 West of the Willamette Meridian in Yamhill County, Oregon, said tract of land being more particularly described as follows:

Commencing at the southeast corner of said Section 21; thence North 00°10'18" West 938.65 feet along the east line of said Section 21 to an iron rod on the south line of the James Shaw Donation Land Claim No. 46, said Township and Range; thence North 89°54'35" West 465.30 feet along said south line of said Claim; thence leaving said south line North 11°33'16" East 87.97 feet to an iron rod marking a point on the west line of that certain tract of land conveyed to L. L. Goforth and Jamie L. Goforth, by deed recorded October 9, 1943, in Book 122 Page 569, Deed Records, Yamhill County, Oregon, and the POINT OF BEGINNING; thence North 1 P33'16" East 604.64 feet, more or less to the northwest corner of said GOFORTH tract, being a point in the center of Panther Creek; thence South 80°17'17" East 152.44 feet along the north line of said GOFORTH tract to a point in said creek from which an iron rod bears South 25°35'20" West 18.65 feet; thence South 25°35'20" West 628.29 feet to the POINT OF BEGINNING, containing 1.05 acres of land more or less, as shown on CS-13393.

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#### PARCEL 2

Beginning at a point on the South line of the James Shaw Donation Land Claim in Section 22, Township 3 South, Range 5 West, Willamette Meridian, Yamhill County, Oregon, at the Southeast corner of that tract as conveyed from Henry F. and Irene G. Sanderson to Richard N. and Lorena F. Von by deed recorded in Yamhill County Film Volume 25, Page 27; from that TRUE POINT OF BEGINNING as following the boundary of the said tract, North 21½° East 0.32½ chains to a stake in the center of the County Road; thence West 5.19 chains to a stake; thence North 30° West 2.13 chains to a stake; thence North 77° West 1.95 chains to the center of Panther Creek; thence upstream along the center of Panther Creek as follows, North 61°30' West 12.20 chains; North 80°22' West 11.20 chains to the most Northwesterly corner of the said tract; thence continuing up the center line of Panther Creek in a Northwesterly direction, to the Southeast corner of that tract described in instrument recorded May 25, 1977 in Film Volume 120, Page 873; thence North 0°33' West 306 feet, more or less, to a point in the centerline of County Road No. 231; thence along the centerline of County Road No. 231, North 56°56'11" East 227.39 feet; more or less, to a point on the South line of that tract as described in instrument recorded March 6, 1962 in Film Volume 21, Page 457; East along the South line of the said tract to the Northwest corner of

that tract as described in Yamhill County Deed Records in Book 151, Page 390 and 391; thence along the West line of the said tract, South 49.29 feet to an iron rod; thence continuing South 300.71 feet to an iron rod at the Southwest corner thereof; thence East 350.0 feet to an iron rod at the Southeasterly corner of the said tract; thence North 115.85 feet to an iron rod; thence North 2°13'10" East 45.76 feet to a point, said point bears East 37.07 feet from the 2 inch iron pipe as set for the reentrant corner of the James Shaw Donation Land Claim by County Survey 2914-1/2 from the said point; thence along the centerline of Panther Creek Road (County Road NO. 231), in an Easterly and Southerly direction to its intersection with the TRUE POINT OF BEGINNING of the tract herein described.

EXCEPTING THEREFROM a tract of land being a portion of the James Shaw Donation Land Claim in Section 22, Township 3 South, Range 5 West, Willamette Meridian and further being a portion of that land described as Parcel 5 of Instrument No. 199811007, Yamhill County Deed Records, and being more particularly described as follows:

Beginning at an iron rod on the West line of that land conveyed to Jack and Loretta Lewis as described in Instrument No. 199805755, said iron rod also being on record as bearing West 322 feet and South 49.29 feet from an iron pipe at the re-entrant corner of said Shaw claim per County Survey No. 2914.5; thence South 0°01'06" West 300.71 feet to the Southwest corner of said Lewis tract; thence South 89°57'00" East 50.85 feet along the South line of the Lewis tract to an iron rod; thence South 10°36'59" West 271.92 feet more or less to the center of Panther Creek (passing an iron rod 204.96 feet); thence Northwesterly along the center of Panther Creek North 46°19'18" West 39.16 feet; thence North 36°03'06" West 102.30 feet; thence North 54°05'21" West 111.54 feet; thence North 65°22'53" West 83.17 feet; thence North 65°55'16" West 84.93 feet; thence North 81°34'42" West 39.52 feet; thence South 75°29'39" West 35.27 feet more or less to the Southeast corner of that tract of land described in instrument recorded May 25, 1977 in Film Volume 120, Page 873, Yamhill County Deed Records; thence along said East line North 0°14'21" East 253.06 feet more or less to the centerline of County Road No. 231 (Panther Creek Road) thence continuing along the road centerline North 56°19'19" East 92.72 feet; thence 122.11 feet along a 268.26 radius curve concave to the Southeast (chord bearing North 69°21'44" East 121.06 feet); thence North 82°24'10" East 41.25 feet; thence 172.88 feet along a 1739.87 foot radius curve concave to the South (chord bearing North 85°14'58" East 172.81 feet) to the centerline intersection with the West line of Lewis property; thence South 0°01'06" West 40.32 feet more or less to the Point of Beginning.

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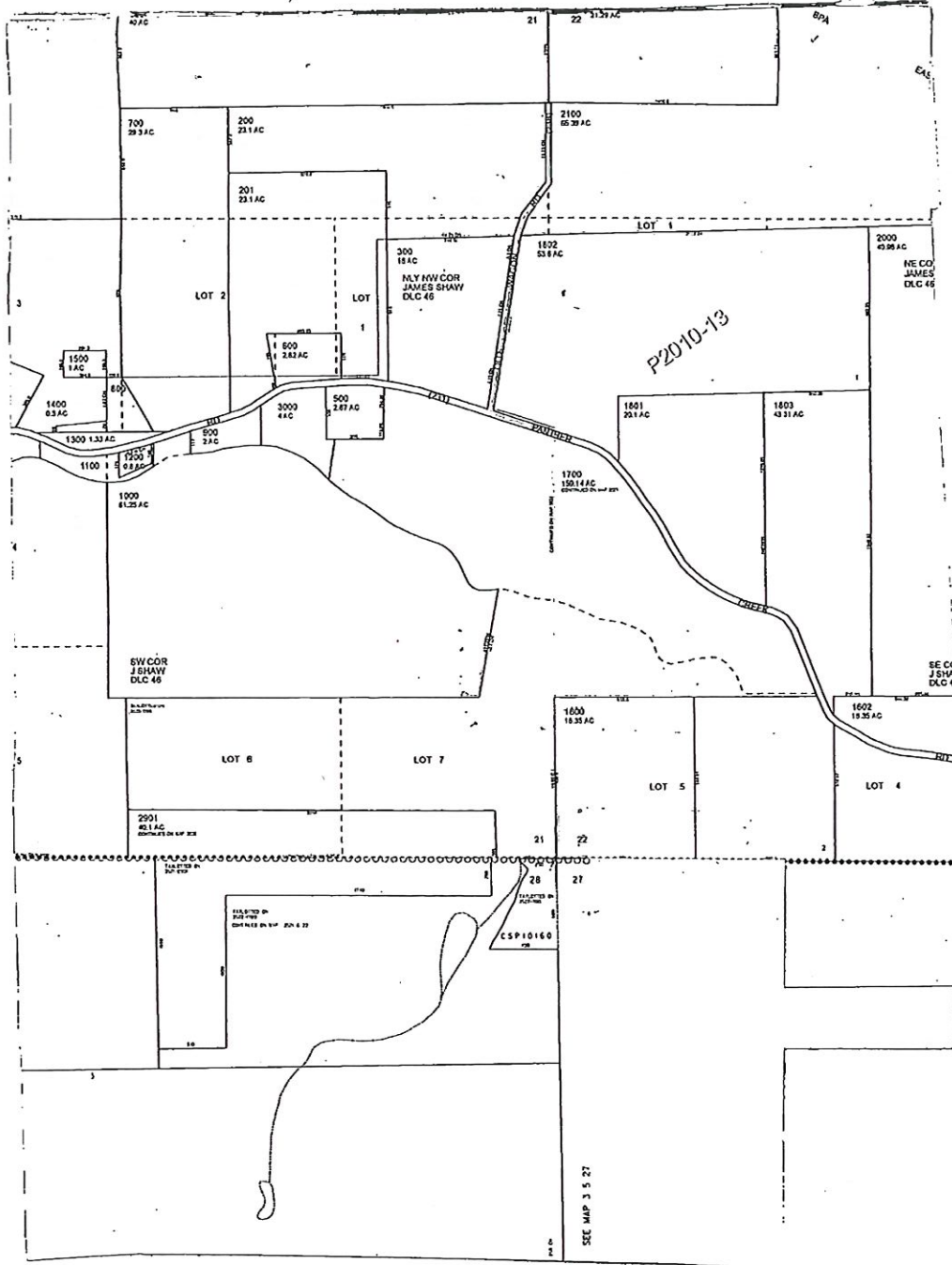
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This map is furnished for illustration and to assist in property location. The company assumes no liability for any variation in dimensions by location ascertainable by actual survey



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# Watermaster Alternate Reservoir Application Review Sheet

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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 Water Resources 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))


<b>Applicant's Name</b> Zach Attack and Love Reservoir 3S 5W Sec 21 and 22		
1. Does the proposed reservoir have the potential to injure existing water rights? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Explain:		
2. Can conditions be applied to mitigate the potential injury to existing water rights? <input type="checkbox"/> YES <input type="checkbox"/> NO Explain: NA no conditions needed		
3. Is water available for the proposed reservoir? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
4. If yes, during what period? Beginning: October  End: July 31  Attach a WARS printout at 50% exceedance. If WARS does not cover the proposed location, make a recommendation for a storage season based upon regulation history and your knowledge of the location. (Water Availability for Reservoir Policy found under OAR 690-410-0070(2)(c))		
5. Did you meet with staff from another agency to discuss this application? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
Who:	Agency:	Date:
Who:	Agency:	Date:

Watermaster Name: Joel Plahn

Watermaster Signature: Joel Plahn Date: 4/7/2021

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

# Land Use Information Form

OREGON Oregon Water Resources Department  
 725 Summer Street NE, Suite A  
 Salem, Oregon 97301-1266503-986-0900  
 www.oregon.gov/OWRD  


NAME <b>Frank Foti</b>		PHONE (HM) <b>503-819-3000</b>	
PHONE (WK)	CELL	FAX	
ADDRESS <b>17405 NW Panther Creek Rd</b>			
CITY <b>Carlton</b>	STATE <b>OR</b>	ZIP <b>97111</b>	E-MAIL* <b>Frank.Foti@evolution.love</b>

### 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:
<u>3S</u>	<u>5W</u>	<u>22</u>	<u>NW-SW</u>	<u>1700</u>	<u>AF-80 (NFLH)</u>	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	<u>Farm</u>
_____	_____	_____	_____	_____	_____	<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:

Yamhill County, Carlton

### 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) \_\_\_\_\_

Estimated quantity of water needed: 6.0   
 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 stock

Briefly describe:

Store excess water from winter rains and improve water quality and availability while reducing erosion.

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.

### 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): 403.02(A)
- 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:	
		<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
		<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.

Name: Stephanie Armstrong Title: Senior Planner  
 Signature: [Signature] Phone: 503.434.7516 Date: 4/15/21  
 Government Entity: Yamhill 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: \_\_\_\_\_

# ODFW Alternate Reservoir Application Review Sheet

<b>This portion to be completed by the applicant.</b>	
Applicant Name: <u>Frank Foti</u>	<b>RECEIVED</b>
Address: <u>17405 NW Panther Creek Road, Carlton, OR 97111</u>	<b>MAY 19 2021</b>
Phone/Email: <u>503-819-3000/frank.foti@evolution.love</u>	<b>OWRD</b>
Reservoir Name: <u>Zach Attack Reservoir</u>	Volume (AF): <u>0.2</u> <b>6.0<sup>KL</sup></b>
Source: <u>Run-off</u>	<input type="checkbox"/> in-channel
Basin Name: <u>Panther Creek</u>	<input checked="" type="checkbox"/> off-channel
Twp Rng Sec QQ: <u>3S 5W 22 NESW</u>	
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) 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)

*\*Based on available information, the proposed use does not appear to involve instream structures that would create or maintain an artificial obstruction. However, if the applicant creates or maintains an artificial obstruction to fish passage for the proposed use, the applicant will need to address Oregon's fish passage laws.*

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 **June-November** 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

<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)





## MENU OF CONDITIONS FOR WRD, ODFW, DEQ AND ODA

Revised May 12, 2020

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Use this menu to identify appropriate conditions to be included in the permit:

**Agricultural Water Quality Management Area Rules:** The permittee shall comply with basin-specific Agricultural Water Quality Management Area Rules described in Oregon Administrative Rule Chapter 603-095. The permittee shall protect riparian areas, including through irrigation practices and the management of any livestock, allowing site capable vegetation to establish and grow along streams, while providing the following functions: shade (on perennial and some intermittent streams), bank stability, and infiltration or filtration of overland runoff.

**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 December-May.

**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.

**Bypass Flows:** Per 690-410-0070 (2)(c), the following flows shall be bypassed or passed through the reservoir during the filling season:

- 1) When the biologically necessary flows identified below are not available immediately upstream of the impacted area, the permittee shall pass all live flow downstream at a rate equal to the inflow, minus the amount of mitigation water provided upstream, if applicable, and
- 2) When the biologically necessary flows identified below are available immediately upstream of the impacted area, the permittee shall pass flow downstream at a rate equal to or greater than the biologically necessary flows.

Once the reservoir has reached the permitted volume, all live flow shall be passed downstream at a rate equal to the inflow.

The permittee shall quantify and document inflow and outflow and maintain the bypass flows for the life of the permit and subsequent certificate per the approved Bypass Plan. The bypass flow data shall be available upon request by the Oregon Water Resources Department, Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, or Oregon Department of Agriculture.

**Construction Activities:** For construction activities (clearing, grading, excavation, staging, and stockpiling) that will disturb one or more acres and may discharge to state waters, the permittee is required to obtain from DEQ a 1200-C NPDES Stormwater Construction Permit prior to project construction.

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

**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.

**Fish Stocking:** Per ORS 498.222 and OAR 635-007-0600, all persons transporting fish in Oregon need to have a fish transport permit issued by the Oregon Department of Fish and Wildlife (ODFW). The permittee shall not stock fish in the reservoir without a fish transport permit approved by ODFW. As part of the permitting process, the permittee must also screen the inlet and outlet of their pond to insure that fish cannot escape into public waters and/or to keep wild fish from entering the pond.

**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 type here River or sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

**In-Water or Riparian Construction:** For in-water or riparian construction, permittee may be required to obtain additional permits from the Oregon Department of State Lands, the U.S. Army Corps of Engineers, and the DEQ Section 401 certification program prior to construction. The applicant must contact these agencies to confirm requirements.

**In-Water Work:** Any in-water work related to construction, development, or maintenance of the proposed use shall be conducted during the preferred work period of type here unless an alternate time period is approved by the Oregon Department of Fish and Wildlife.

**Live Flow:** Once the allocated volume has been stored, permittee shall pass all live flow downstream at a rate equal to inflow, using methods that protect instream water quality.

**Off-Channel Stored Water Releases:** The permittee shall not release polluted water from this off-channel reservoir into waters of the state except when the release is directed by the State Engineer to prevent dam failure.

**On-Channel Reservoir:** The permittee shall design and operate the water storage facility such that all waters within and below the reservoir meet water quality criteria. The permittee shall develop a reservoir operations plan that details how water quality criteria and standards will be met. A Certified Water Rights Examiner shall verify that the reservoir operations are consistent with the plan before a certificate is issued. The reservoir operator shall maintain a copy of the plan and make it available for review upon request.

**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.

**Water Quality:** All water use under this permit shall comply with state and federal water quality laws. The permittee shall not violate any state and federal water quality standards, shall not cause pollution of any waters of the state, and shall not place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means. The use may be restricted if the quality of source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards.

**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.

**wetland:** The permittee must submit an offsite determination request to the Oregon Department of State Lands (DSL) to determine the need for a wetland delineation prior to disturbance or development of the point of diversion and/or diversion of water.

**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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### Oregon DEQ Alternative Reservoir Review Summary Sheet

#### Applicant Information:

<b>Applicant Name:</b>	Frank Foti	<b>Reservoir Name:</b>	Zach Attack Reservoir Love Reservoir
<b>Basin &amp; Sub-basin:</b>	Willamette Basin and Middle Willamette Sub-basin	<b>Requested Water Amount:</b>	Zach Attach - 0.2 AF Love - 9 AF
<b>Nearest Surface Water:</b>	Panther Creek and North Yamhill River	<b>Nearest Receiving Waterbody:</b>	Panther Creek and North Yamhill River
<b>Proposed Use:</b>	multipurpose	<b>Requested Period of Use:</b>	Year round

<b>Alternative Reservoir:</b> Per ORS 537.409 will the proposed use potentially impair water quality that supports existing fish resources (e.g. habitat)	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Insufficient data
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#### Comments

##### Regarding Water Quality Impairment(s) Impacts on Fishery Resources

The proposed off-channel reservoirs will divert surface water from Panther Creek in the North Yamhill watershed. Diminished flows from Panther Creek can impact the following water quality impairments: BioCriteria, Dissolved Oxygen, and Temperature.

The Yamhill River has TMDLs for mercury and phosphorus. DEQ's primary concerns are temperature loading from diversions, mercury from erosion, and nutrient and temperature loading from reservoir releases during low-flow summer months defined in the TMDL (May – October). DEQ requests the applicant not release polluted water from this off-channel reservoir into waters from of the state from May – October except when the release is directed by the State Engineer to prevent dam failure. Reservoir releases could contain phosphorus which would increase phosphorus loading.

Diminished flows can impact temperature impairments in Panther Creek. Therefore, DEQ requests the applicant limit use to the period during the months when cumulative flows exceed 20%: November 1 – May 31.

Construction of the reservoir and point of diversion may require additional DEQ permits, such as a 1200-C stormwater construction permit. DEQ suggests the applicant call the relevant agencies/departments to determine if additional permits are required.

#### Recommended Permit Conditions

- 1. Water Quality:** All water use under this permit shall comply with state and federal water quality laws. The permittee shall not violate any state and federal water quality standards, shall not cause pollution of any waters of the state, and shall not place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means. The use may be restricted if the



- quality of source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards. Permittee is responsible for obtaining any necessary state and federal permits.
2. **Agricultural Water Quality Management Area Rules:** The permittee shall comply with basin-specific Agricultural Water Quality Management Area Rules described in Oregon Administrative Rule Chapter 603-095. The permittee shall protect riparian areas, including through irrigation practices and the management of any livestock, allowing site capable vegetation to establish and grow along streams, while providing the following functions: shade (on perennial and some intermittent streams), bank stability, and infiltration or filtration of overland runoff.
  3. **Off-Channel Stored Water Releases:** The permittee shall not release polluted water from this off-channel reservoir into waters of the state from May 1 – October 31 except when the release is directed by the State Engineer to prevent dam failure.
  4. **Limit Period of Use:** Water use shall be limited to the period: November 1 – May 31.

Cumulative Withdrawals Effects

Is it likely that the proposed activity, together with existing withdrawals in the OWRD’s Water Availability Basin (WAB), will lower water quality and impair fishery resources, and aquatic life?  No  Yes

Water Availability and Cumulative Impacts Summary Table

Percent of natural flow = (consumptive use/natural stream flow)\*100. See Appendix for additional

[Water Availability Basin]: N YAMHILL R > YAMHILL R - AT MOUTH

Watershed ID	Exceedance Level	Month	Natural Stream Flow	Consumptive Use	Expected Stream Flow	Reserved Stream Flows	Instream Requirement	Net Water Available	Percent of Flow
70746	50	JAN	824	30.7	793	0	70	723	4%
70746	50	FEB	867	31.4	836	0	70	766	4%
70746	50	MAR	663	22.9	640	0	70	570	3%
70746	50	APR	374	23.7	350	0	70	280	6%
70746	50	MAY	175	22.9	152	0	70	82.1	13%
70746	50	JUN	92.8	26.1	66.7	0	40	26.7	28%
70746	50	JUL	48.9	30.7	18.2	0	15	3.23	63%
70746	50	AUG	31.9	28.2	3.66	0	10	-6.34	88%
70746	50	SEP	26.3	21.4	4.85	0	10	-5.15	81%
70746	50	OCT	32.1	13.4	18.7	0	10	8.68	42%
70746	50	NOV	221	20.1	201	0	70	131	9%
70746	50	DEC	796	30.2	766	0	70	696	4%
70746	50	ANN	249000	18200	231000	0	34600	197000	7%

Integrated Report Water Quality Impairment- 303(d) List Summary Table

Assessment Unit Name	Assessment Unit Description	Parameter	Status*	Beneficial Uses
Panther Creek	Headwaters WA Unit to Baker Creek	BioCriteria	Category 5	Fish and Aquatic Life
		Dissolved Oxygen- Year Round	Category 5	Fish and Aquatic Life
		E. coli	Category 4A	Water Contact Recreation
		Temperature- Year Round	Category 5	Fish and Aquatic Life



HUC12 Name: Panther Creek	Watershed Unit (1st through 4th order streams)	Turbidity	Category 5	Fish and Aquatic Life; Private Domestic Water Supply; Public Domestic Water Supply
<b>*Integrated Report Category</b> <b>Category 4</b> - Data indicate that at least one designated use is not supported, but a TMDL is not needed to address the pollutant <b>Category 4A</b> - Clean-up plans (also called TMDLs) that will result in the waterbody meeting water quality standards and supporting its beneficial uses have been approved <b>Category 4B</b> - Other pollution control requirements are expected to address pollutant of concern and will result in attainment of water quality standards <b>Category 4C</b> - The impairment is caused by pollution, not a pollutant. For example, flow, or lack of flow, are not considered pollutants, but may be affecting the waterbody's beneficial uses <b>Category 5</b> - Data indicate a designated use is not supported or a water quality standard is not attained and a TMDL is needed. This category constitutes the Section 303(d) list that EPA will approve or disapprove under the Clean Water Act				

<b>DEQ review prepared by:</b> Sarah Sauter	<b>Date complete:</b> 5/4/2021
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**Standard Water Quality Considerations Related to Aquatic Life Beneficial Uses**

1. **Antidegradation:** Rule 340-041-0004 applies: withdrawals cannot cumulatively increase a waterbody's temperature by more than 0.5 degrees Fahrenheit or cause a 0.1 mg/l decrease in dissolved oxygen from the upstream end of a stream reach to the downstream end of the reach so long as it has no adverse effects on threatened and endangered species. See OAR [340-041-0004\(3\)-\(5\)](#) for a description in rule of activities that do not result in lowering of water quality.
2. **Flow Modification:** Temperature and dissolved oxygen are flow-related parameters. When streamflow is reduced, assimilative capacity is reduced. As a waterbody heats up, dissolved oxygen concentrations decline. Reduced stream flows (including groundwater inputs to streamflow), exacerbate temperature and/or dissolved oxygen impairments.
3. **Temperature:** Increases in temperature or reduction in dissolved oxygen adversely affect ST&E fish. Additional heat or reduction in dissolved oxygen concentrations will further impact the habitat of these species.

**Menu of Conditions Related to Impairments Affecting Aquatic Life Beneficial Uses:**

- **Water Quality:** All water use under this permit shall comply with state and federal water quality laws. The permittee shall not violate any state and federal water quality standards, shall not cause pollution of any waters of the state, and shall not place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means. The use may be restricted if the quality of source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards. Permittee is responsible for obtaining any necessary state and federal permits.
- **Agricultural Water Quality Management Area Rules:** The permittee shall comply with basin-specific Agricultural Water Quality Management Area Rules described in Oregon Administrative Rule Chapter 603-095. The permittee shall protect riparian areas, including through irrigation practices and the management of any livestock, allowing site capable vegetation to establish and grow along streams, while providing the following functions: shade (on perennial and some intermittent streams), bank stability, and infiltration or filtration of overland runoff.
- **Water Storage Construction:** The applicant shall locate the reservoir outside of the stream's natural channel. *identify waterbody and set back to prevent stream capture and justification for distance selected.*
- (Note to reviewer: The 1200C permit requires a 50-foot setback, which is cited from the National General Construction Permit OAR-660-023-0090(5). Requiring the storage reservoir to be outside of the mapped 100 year floodway may also be a protective buffer. )
- **Off-Channel Stored Water Releases:** The permittee shall not release polluted water from this off-channel reservoir into waters of the state except when the release is directed by the State Engineer to prevent dam failure.



- **Limit Period of Use:** Water use shall be limited to the period: *start date through end date*. (Note to reviewer: Do not split the irrigation season. Require mitigation if water is not available during the requested time period.)
- **On-Channel Reservoir:** The permittee shall design and operate the water storage facility such that all waters within and below the reservoir meet water quality criteria. The permittee shall develop a reservoir operations plan that details how water quality criteria and standards will be met. A Certified Water Rights Examiner shall verify that the reservoir operations are consistent with the plan before a certificate is issued. The reservoir operator shall maintain a copy of the plan and make it available for review upon request.
- **Restrict Reservoir Release:** To prevent pollution downstream, the permittee shall not release water from the reservoir when the flow at Gaging Station ID *(gage name)* is below the Mean Daily Discharge of *CFS* (discharge which was equaled or exceeded for 90% percent of the time) except when the release is directed by the State Engineer to prevent dam failure.
- **Live Flow:** Once the allocated volume has been stored, permittee shall pass all live flow downstream at a rate equal to inflow, using methods that protect instream water quality.
- **Mitigation Obligation:** Prior to the issuance of a Proposed Final Order, the applicant shall submit a mitigation proposal that is of no less volume and rate than the permitted use. The proposal shall include water that is sourced upstream of the point of diversion or appropriation, or the uppermost point on the stream at which the potential for surface water interference occurs. If a surface water right is used for mitigation, it shall be transferred instream for the [month-month] time period, and be of similar water quality. The applicant should contact their OWRD caseworker to discuss flow mitigation options.

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**AGRICULTURAL LEASE AND OPTION TO PURCHASE**

Date: September 15, 2020 "Effective Date"

Between: Von Family Limited Partnership,  
an Oregon Limited Partnership  
17401 NW Panther Creek Road, Carlton, OR 97111 "Landlord"

And: HOB Oregon, LLC,  
an Oregon Limited Liability Company  
15990 NW Red Shot Lane, Carlton, OR 97111 "Tenant"

**Section 1. Description of Leased Property**

Landlord hereby leases to Tenant, and Tenant leases from Landlord, approximately 75 acres of real property located at 17401 NW Panther Creek Road, Carlton, Oregon and all rights, privileges and appurtenances belonging or pertaining thereto, including, without limitation, all water rights associated with such real property, use of the existing access easement ("Easement") off of NW Panther Creek Road and west of Old Wagon Road and use of the airstrip located on such real property (collectively, the "Property") shown on the map attached as **Exhibit A**. Landlord leases to Tenant the personal property located on the Property (including, but not limited to fencing, irrigation systems and related equipment) listed on **Exhibit B**. These and all other exhibits are incorporated by this reference as if fully set forth in this Lease.

**Section 2. Term of Lease**

**2.1** The term of this Lease will commence September 15, 2020, and will expire September 14, 2025, unless terminated earlier as provided herein.

**Section 3. Condition of Property**

**3.1 Alterations.** Tenant shall not make alterations or improvements to the Property without, in each instance, obtaining Landlord's prior written consent; provided, however, that Tenant may make any improvement or alteration, the cost of which does not exceed Fifty Thousand and NO/100 Dollars (\$50,000.00), without Landlord's consent. All alterations and improvements will be made in a good and workmanlike manner, and in compliance with applicable laws and building codes. Tenant must notify Landlord ten (10) days prior to the commencement of any such alteration or improvement to the Property. In the event that Tenant exercises its Option to purchase the Property (as set forth in attached Exhibit C), all amounts paid by Tenant for alterations and improvements to the Property that increase the appraised fair market value, as defined in Exhibit C, shall be credited, on a dollar for dollar basis by the amount(s) that they increase the real market value of the Property, against the amount paid by Tenant to purchase the Property. Alterations or improvements that detract from or have no effect on the real market value at the time Tenant exercises its Option to purchase the Property shall not be considered in determining the market value or credited against the agreed upon sale price.

**3.2 Existing Lease.** A portion of the Property is currently occupied by an existing tenant ("Farm Tenant") pursuant to an oral lease agreement ("Farm Lease"). Landlord and Tenant acknowledge and agree that the Farm Tenant may continue to use and occupy such portion of the Property consistent with the Farm Lease and current operations on the

Property, for a period of up to thirty (30) days following the Effective Date of this Lease. Tenant shall have no responsibility or liability for any claims, damages, costs, liabilities, or losses that arise out of or are related to Farm Tenant's use or occupancy of the Property.

**3.3 Condition at Termination of Lease.** At the termination of this Lease, with the exception of permitted alterations, the Property will be returned to Landlord in the same condition as at the commencement of this Lease, all repairs being completed as required in this Lease, reasonable wear to the fixtures being excepted.

**3.4 Construction Liens.** Tenant will not suffer or permit any construction liens to attach to the interest of Tenant in all or any part of the Property by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Tenant or anyone occupying or holding an interest in all or any part of the improvements on the Property through or under Tenant. If any such lien at any time is filed against the Property, the terms of Section 14 shall apply.

Landlord has the right to post and keep posted at all reasonable times on the Property and on any improvements any notices that Landlord is required to post for the protection of Landlord and of the Property and of any improvements from any such lien.

#### **Section 4. Consideration**

**4.1** In consideration of Landlord's agreement to lease the Property to Tenant and to grant an option to purchase the Property, Tenant agrees to pay rent (the "Rent") to Landlord annually due on or before September 15 of each calendar year, in the amount of Ten Thousand Dollars (\$10,000.00). All Rent shall be paid to Landlord, without deduction or offset and without notice or demand. Landlord shall not be deemed to have become or to be a partner or joint venturer with Tenant in connection with Tenant's business carried on under this Lease, and Landlord will have no obligation with respect to Tenant's debts or other liabilities and no interest in Tenant's profits.

#### **Section 5. Costs of Farming; Property Costs**

Tenant will be responsible for and pay all the costs of materials, labor, equipment, utilities and other expenses necessary to graze animals on the Property or otherwise use the Property for farming related purposes during the Lease term. During the Lease term, Tenant will be responsible for and pay all the costs of (a) maintaining liability insurance with respect to the Property and Tenant's operations on the Property as provided in Section 15 below; (b) all utilities, if any, serving the Property; (c) Tenant's use of the water rights serving the Property; and (d) any power required for Tenant's installation of fencing or for irrigation pumping on the Property. Landlord will be responsible for all other costs associated with the Property during the term of the Lease.

#### **Section 6. Manner of Farming and Conservation Laws**

Tenant will farm, cultivate, maintain, and operate the Property consistent with the standard agricultural practices employed by the farming industry in the area where the Property is located. Tenant will maintain the Property in compliance with all federal, state, and other governmental laws, regulations, and directives. Tenant shall comply in all respects with all applicable rules, laws and other requirements relating to the water rights appurtenant to the Property, including those rules and laws relating to the beneficial use of water rights.

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**Section 7. Eminent Domain**

If all or any substantial part of the Property shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, or conveyance in lieu of such appropriation, this Lease shall be terminated upon completion of such taking, appropriation, or conveyance. Landlord shall be entitled to any and all income, rent, award, or any interest whatsoever in or upon any such sum, which may be paid or made in connection with any such public or quasi-public use or purpose, and Tenant hereby assigns to Landlord any interest it may have in or claim to all or any part of such sums, other than any separate award which may be made with respect to Tenant's interest in improvements installed on the Property by or on behalf of Tenant and the value of any unexpired term of this Lease.

**Section 8. Landlord and Tenant to Comply with Environmental and Hazardous Materials Laws.**

**8.1** Tenant, at Tenant's expense, will comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county, and municipal authorities pertaining to Tenant's use of the Property, including, without limitation, those required to comply with all applicable federal, state, and local laws, regulations, or ordinances pertaining to Hazardous Materials as defined in Section 8.5 below.

**8.2** Tenant will not cause or permit any Hazardous Material to be brought on, kept, or used in or about the Property by Tenant or Tenant's agents, employees, contractors, or invitees without the prior written consent of Landlord, which will not be unreasonably withheld as long as Tenant demonstrates to Landlord's reasonable satisfaction that the Hazardous Material is necessary or useful to Tenant's use of the Property and will be used, kept, and stored in a manner that complies with all legal requirements regulating any such Hazardous Materials brought on, kept, or used in or about the Property.

**8.3** Tenant will indemnify, defend, and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses that arise out of or related to: (a) Tenant's violation of any law relating to the acquisition, use, disposal or storage of Hazardous Materials; or (b) the Property's contamination by Hazardous Materials as a result of Tenant's use or activities or those of Tenant's agents, employees or contractors.

**8.4** Landlord will indemnify, defend, and hold Tenant harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, sums paid in settlement of claims, attorney fees, consultant fees, and expert fees) that arise out of or are related to: (a) Landlord's violation of any law relating to the acquisition, use, disposal or storage of Hazardous Materials; or (b) the Property's contamination by Hazardous Materials as a result of Landlord's use or activities or those of Landlord's agents, employees or contractors.

**8.5** As used in this Lease, the term *Hazardous Material* means any hazardous or toxic substance, material, or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101 and amendments thereto) or by the United States Environmental Protection Agency as hazardous substances (40 CFR pt 302 and amendments thereto), petroleum products, or other such substances, materials, and wastes that are or become regulated under any applicable local, state, or federal law.

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**8.6** Landlord represents and warrants to Tenant that there are no Hazardous Materials present in the soil or groundwater under the Property.

### **Section 9. Chemicals and Fertilizers**

The parties understand that chemicals and fertilizers may be necessary to produce the best results from Tenant's operations on the Property. They also understand that chemicals and fertilizers can damage the Property if applied incorrectly or on crops that are excluded on a chemical's or fertilizer's product label. Subject to the limitations in Section 8 above, chemicals and fertilizers will be used by Tenant, if necessary, to produce the best results from the Property, subject to the condition that Tenant will not, without Landlord's prior written consent, use any of the fertilizers or chemicals that would adversely affect the condition of the Property and the crops grown or animals raised after termination of this Lease. All chemicals and fertilizers used by Tenant on the Property shall be used: (a) in reasonable amounts; (b) in compliance with all applicable laws and regulations; (c) by individuals who are knowledgeable about proper use and administration; and (d) in accordance with manufacturers' instructions.

### **Section 10. Use of Property**

**10.1** Tenant will maintain the Property in good condition and repair and will not commit, permit, or suffer any waste of the Property.

**10.2** Tenant will maintain all of the fixtures including, but not limited to, irrigation facilities and fences on the Property in as good a condition and repair as they were at the commencement of this Lease, reasonable wear and tear excepted, and subject to any Landlord repair or restoration covenants in this Lease.

### **Section 11. Agricultural Programs**

**11.1** Crops to be raised on the Property, if any, may be the subject of USDA or other federal or state government programs. Tenant will enter into and comply with all mandatory government programs for crops raised on the Property by Tenant. Tenant will notify Landlord before entering into any voluntary government programs regarding any crops to be raised on the Property, and Tenant will comply with applicable requirements of any such programs.

**11.2** If the Property is enrolled in, and payments are made under, any government programs, then the payments applicable to the term of this Lease will be distributed to Tenant.

### **Section 12. Irrigation**

**12.1** Tenant may raise irrigated crops on the irrigated portion of the Property and in this respect will retain the water rights on the Property during the term of this Lease, and upon purchase, if Tenant exercises its option to purchase the Property.

**12.2** Ditching, ditch cleaning and other activities as may be necessary to effectively irrigate and drain the Property will be the responsibility of Tenant. In the event Tenant believes new headgates, culverts or other improvements to the irrigation equipment is required, Tenant will advise Landlord. If Landlord agrees, Landlord will pay for these items, and Tenant will install such improvements. If Landlord disagrees, Tenant may pay for such improvements and install them with Landlord's written consent, which consent shall not be unreasonably withheld.

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**Section 13. Taxes**

Tenant will pay all taxes on any of Tenant's personal property used on the Property and any business and occupation taxes or other governmental impositions that would not be charged in the absence of Tenant's use and operation of the Property. Landlord will pay real property taxes and other governmental assessments, or impositions levied on the Property that do not arise out of Tenant's use and operation of the Property.

**Section 14. Liens**

Tenant will pay when due all claims for work done on the Property, and for services rendered or material furnished to Tenant to conduct Tenant's operations on the Property or incurred for Tenant's repair responsibilities for the Property and Improvements. Tenant will keep the Property free of any liens arising out of the failure to pay such claims or arising out of any other activity of Tenant. If the Property or Improvements are subjected to any lien because of the activities of Tenant, and a lien is not discharged within thirty (30) days, Landlord may discharge the lien and recover the cost from Tenant on demand, plus interest at the rate of 4% per annum from the date of expenditure. Such action by Landlord will not constitute a waiver of any right or remedy that Landlord may have on account of Tenant's default. If Tenant in good faith elects to contest the lien, then Tenant will, on Landlord's written request, deposit with Landlord cash or sufficient corporate surety bond or other commercially reasonable security, to discharge the lien plus costs and interest.

**Section 15. Indemnity; Liability Insurance**

**15.1** Except to the extent of the gross negligence or willful misconduct of Landlord, Tenant hereby agrees to indemnify, protect, defend and hold Landlord, its agents and employees, harmless from and against any and all claims, losses, actions, damages, liabilities and expenses (i) resulting from or connected to Tenant's use and occupancy of the Property or any part thereof; or (ii) to the extent arising out of Tenant's default under this Lease.

**15.2** Before taking possession of the Property, Tenant will procure, and during the term of this Lease will continue to carry, either a farmer's liability coverage policy or a commercial general liability policy of insurance, naming Landlord as an additional insured, with liability limits of not less than Five Hundred Thousand Dollars (\$500,000) for injury to persons or property in one occurrence. The form of the insurance and the carrier shall be subject to the reasonable approval of Landlord. Tenant shall provide Landlord with copies of all policies evidencing the insurance with an endorsement requiring 10 days' notice to Landlord before the cancellation or prejudicial modification of the insurance coverage.

**Section 16. Default; Remedies**

**16.1** The following will be events of default:

(a) Failure to pay any amount due hereunder within five (5) business days of the date such amount is due.

(b) Dissolution, termination of existence, insolvency, business failure, discontinuance as a going business (except for labor disputes), appointment of a receiver for Tenant or the Property, assignment for the benefit of creditors, or commencement of any proceedings under any bankruptcy or insolvency laws by or against Tenant.

(c) Failure of Tenant to comply with any other term or condition or fulfill any other obligation of this Lease within 30 days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 30-day period, no event of default will occur if Tenant begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as possible.

(d) Abandonment by the Tenant of the Property.

**16.2** In the event of default by Tenant, Landlord will have the right, at its option, to terminate this Lease, reenter, take possession of the Property, and remove any persons or property by legal action. Such rights will be cumulative and in addition to all other remedies available to Landlord under applicable law. Upon such termination, Landlord shall be entitled to recover any damages as a result of the breach and termination.

**16.3** In the event that Tenant elects to exercise its Option to purchase the Property and Landlord is obligated to convey the Property to Tenant but fails to do so, such failure shall be a default under this Lease and Tenant shall be entitled to exercise any and all remedies available to Tenant, including the right to specific performance and the right to extend the term of this Lease on a month to month basis until Landlord has deeded the Property to Tenant.

#### **Section 17. Landlord's Right of Entry**

Landlord may go on the Property at any time to inspect the Property or to cure a Tenant default, as long as Landlord gives reasonable prior notice to Tenant and enters in a reasonable manner that does not harm Tenant's operations or interfere with Tenant's farming activities; provided, however, no notice shall be required in the event of an emergency that poses an imminent risk of harm to persons or property.

#### **Section 18. Quiet Enjoyment**

Landlord warrants that it is the owner of the Property and has the right to lease the Property. Landlord will defend Tenant's right to quiet enjoyment of the Property from the lawful claims of all persons during the Lease term.

#### **Section 19. Assignment**

The interest of Tenant in this Lease may not be assigned or otherwise transferred in whole or in part by Tenant without the prior written approval of Landlord; provided, however, that Tenant shall have the right to assign Tenant's interest in this Lease, and its rights hereunder, without the necessity of obtaining the approval of Landlord, to any entity in which Tenant or an affiliate of Tenant has an ownership or management interest.

Landlord shall have the right to assign this Lease to any successor owner of the Property.

#### **Section 20. Successor Interests**

This Lease will be binding on and inure to the benefit of the parties, their successors, and assigns.

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**Section 21. Nonwaiver**

Failure by either party at any time to require performance by the other of this Lease will in no way affect that party's right to enforce any Lease provisions; nor will any waiver of any breach be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

**Section 22. Notices**

Any notice under this Lease must be in writing and will be effective when actually delivered or, if mailed, when deposited as registered or certified mail directed to the address stated on the first page of this Lease or to such other address as either party may specify by notice to the other party. Payments to Landlord will be made to the same address.

**Section 23. Quitting Property at End of Lease**

**23.1** Tenant will peaceably surrender, quit, and give up the Property at the termination of this Lease.

**23.2 Holdover.** If Tenant does not vacate the Property at the time required, Landlord shall have the right to eject Tenant from the Property and recover damages caused by wrongful holdover.

**Section 24. Attorney Fees**

If litigation is instituted arising directly or indirectly out of this Lease, the losing party will pay the prevailing party's reasonable attorney fees and court costs as determined by the court, at trial, or any appeal or review therefrom, including, without limitation, those incurred in any bankruptcy proceeding.

**Section 25. Representations and Warranties**

Landlord has used the Property, or permitted the Property to be used, for agricultural purposes. Incident to such use insecticides and/or herbicides may have been applied in connection with the production of agricultural products on the Property. Fertilizers have been applied. To the actual knowledge of Landlord, without undertaking any special investigation, all such applications have been made consistent with recommended and approved standards.

Tenant accepts the Property, improvements, and the personal property, if any, included in this Lease in their present condition, AS IS, without any representation or warranties, express or implied, except as otherwise set forth in this Lease.

**Section 26. Limitation of Liability**

Landlord's liability under or related to this Lease shall be limited to its interest in the Property.

**Section 27. Option to Purchase**

Landlord hereby grants Tenant an option to purchase the Property pursuant to the terms of **Exhibit C**, attached hereto and incorporated herein.

**Section 28 Execution; Counterparts; Signatures Transmitted Electronically**

This lease may be executed simultaneously in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. Signatures transmitted by facsimile, PDF file or other form of electronic transmission and received by the other party shall be sufficient evidence of the execution hereof by the applicable signatory and such signatures shall be treated as originals.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

LANDLORD:

TENANT:

Von Family Limited Partnership,  
an Oregon Limited Partnership

HOB Oregon, LLC,  
an Oregon Limited Liability Company

By: Lorrie J. Von  
Name: Lorrie J. Von  
Title: General Partner

DocuSigned by:  
Frank Foti  
By: FRANK FOTI  
Name: FRANK FOTI  
Title: Manager

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EXHIBIT A



Property Subject to Lease Outlined in Red

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**EXHIBIT B**

*[Personal Property Included in Lease]*

1. All irrigation pumps on Property;
2. All other irrigation hardware on Property, if any; and
3. Existing fences on the Property, if any.

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## Exhibit C

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The terms of this Exhibit C are incorporated in to that certain Agricultural Lease and Option to Purchase (the "Lease"), dated effective September 15, 2020, by and between Von Family Limited Partnership, an Oregon limited partnership ("Landlord") and HOB Oregon, LLC, an Oregon limited liability company ("Tenant"), as if set forth fully therein. All capitalized terms used in this Exhibit C shall have the meanings ascribed to them in the Lease unless otherwise defined herein.

1. Grant of Option to Purchase. Landlord hereby grants Tenant an option to purchase the Property (the "Option") on the terms and conditions contained herein.
2. Exercise. The Option may be exercised by Tenant at any time during the period commencing on the date that is ninety (90) days prior to the expiration of the second Lease year and expiring on the date that is ten (10) days following the end of the second Lease year (the "Exercise Expiration Date"). Tenant may not exercise the Option if Tenant is in default under the Lease. To exercise the Option, Tenant must give Landlord written notice of Tenant's intent to acquire the Property ("Exercise Notice") prior to the Exercise Expiration Date. Closing will occur on the date specified in the Exercise Notice, which must be no later than ninety (90) days from the date of the Exercise Notice, or such earlier date as the parties shall mutually agree (the "Closing Date").
3. AS-IS. Tenant acknowledges having been in possession of the Property since the Effective Date of the Lease. Accordingly, Tenant has had the opportunity to inspect the Property and conduct such tests and analysis as Tenant deems necessary or appropriate. Tenant therefore acknowledges and agrees that the Property will be sold in its "as is, with all faults" condition; provided, however, the Property shall be deeded to Tenant free and clear of any liens or encumbrances other than non-delinquent taxes, the Easement, utility easements and such other encumbrances as are identified on the title report to be obtained in conjunction with Tenant's exercise of the Option and set forth as permitted exceptions in attached **Schedule 1**.
4. Purchase Price. The total purchase price for the Property (the "Purchase Price") shall be paid by Tenant to Landlord by wire transfer of same-day funds at Closing (defined below). Amounts paid by Tenant for alterations and improvements to the Property shall be credited as described in Section 3.1, above, against the Purchase Price. The Purchase Price shall be the appraised fair market price with appropriate reductions made to the Purchase Price which reflect the appreciation in value of the Property created by Tenant, if any. The appraised value shall be determined as follows if not mutually agreed to by Tenant and Landlord within thirty (30) days after receipt of the Exercise Notice by Landlord:

For the purposes of Tenant's Option under the Lease, the "Appraised Value" of the Property shall mean the fair market value of the Property as determined by an appraiser of recognized standing agreed to by Landlord and Tenant. In the event that Landlord and Tenant cannot agree on an appraiser, each shall select an appraiser of recognized standing. Each appraiser shall independently determine the fair market value of the Property and prepare a written report of such determination. If the fair market values independently determined by such appraisers differ by ten percent (10%), the appraisers shall meet and resolve any conceptual or factual inconsistencies or inaccuracies in their reports. The appraisers shall not arbitrate or negotiate the variance in their reports without the agreement of Landlord and Tenant. After making any appropriate changes in the respective reports, both reports shall be delivered to Landlord and Tenant, who shall attempt to resolve

any differences in such appraisal reports. If Landlord and Tenant fail to agree on the fair market value of the Property within thirty (30) days, the two appraisers shall jointly select a third appraiser of recognized standing. On the basis of an inspection of the Property and any additional independent work which the third appraiser shall deem necessary, the third appraiser, within thirty (30) days after his selection, shall adopt the more reasonable of the first two appraisals, without any adjustments other than the correction of previously undiscovered arithmetic errors, and the appraisal adopted by the third appraiser shall be the Appraised Value of the Property. Landlord and Tenant shall each bear one-half (1/2) of the fees and expenses of such appraiser or appraisers, including the cost of selection thereof.

5. Closing. Closing shall occur through an escrow with \_\_\_\_\_, Attn.: \_\_\_\_\_. At Closing, Landlord shall convey the Property to Tenant via a special warranty deed, subject only to the exceptions described in Section 3 above. Landlord will also transfer to Tenant all irrigation equipment located on, and used in conjunction with, the Property via a bill of sale. Landlord shall provide Tenant with a standard owner's policy of title insurance in the amount of the Purchase Price. Tenant shall pay all transfer taxes and all recording fees. Landlord and Tenant shall each be responsible for one-half of any escrow fees incurred in connection with the Closing. Real property taxes and assessments, and water charges and assessments will be prorated. Any other costs and expenses will be allocated in accordance with local custom.

6. Water Rights. Tenant shall be responsible for preparing any paperwork necessary to reflect the transfer of the water rights that are associated with the Property. Landlord will convey such water rights at Closing, and Landlord will cooperate in such transfer as Tenant may request from time to time.

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**Schedule 1 to Exhibit C  
Permitted Exceptions**

N/A



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

Today's Date: Monday, May 17, 2021

Base Application Fee.		\$410.00
Proposed Dam Height in feet.	8	
Proposed Reservoir volume in Acre Feet.	6	\$210.00
Subtotal:		\$620.00
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		\$1,140.00

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