CLACKAMAS COUNTY

BUSINESS & COMMUNITY SERVICES
150 BEAVERCREEK ROAD
OREGON CITY, OR 97045
WWW.CLACKAMAS.US/BCS
SARAH ECKMAN, INTERIM DIRECTOR

April 15, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Joint Permit Application for ODFW Eagle Fern Weir Removal Project

Purpose/Outcome	BCS – County Parks requests BCC Chair signature on Oregon Department of Fish and Wildlife (ODFW)s Joint Permit Application to the U.S. Army Corps of Engineers, Oregon Department of State Lands, and Oregon Department of Environmental Quality, for the Eagle Fern Weir Removal project.
Dollar Amount and Fiscal Impact	BCS – County Parks will pay $960 toward the weir removal project. All remaining project costs of the $129,000 project are being paid for by other parties
Funding Source	BCS – County Parks budget
Duration	*Project scheduled to be completed by 11/30/2021.*
Previous Board Action/Review	*Board approved support for the project at the 3/23/2021 Policy Session.*
Strategic Plan Alignment	1. *How does this item align with your department's Strategic Business Plan goals?* Supporting this project aligns with the BCS strategic result of maintaining clean, safe, healthy parks by permitting a project to move forward which improves fish passage, restores natural stream function, and mitigates public safety concerns related to the weir as it ages. *2. How does this item align with the County's Performance Clackamas goals?* Supporting this project aligns with the Performance Clackamas strategic priority of Honoring our Natural Resources by supporting improved fish passage and restoration of natural stream function.
Counsel Review	*4/5/2021 A.R.N.*
Procurement Review	1. Was the item processed through Procurement? yes ☐ no x 2. If no, provide brief explanation: Item is a Permit Application and not subject to procurement.
Contact Person	*Tom Riggs, BCS/Parks and Forestry Manager, 503-781-3137, triggs@clackamas.us*
Contract No.	*N/A*

BACKGROUND:

On 3/23/2021, in a Policy session, BCS - County Parks, and Oregon Department of Fish & Wildlife (ODFW) staff presented a project proposal for removing a weir (dam) at Eagle Fern County Park, and requested a "Landowner Letter of Support". After the Board approved sending the letter of support, ODFW provided further clarification to Parks staff that they were looking for a signature on a "Memorandum of Understanding" and a "Joint Permit Application". Recognizing that these documents were more than a simple letter of support, BCS staff felt it necessary to bring these before you at Administrator's Issues prior to submittal for approval at a Business Meeting.

As discussed, the project involves ODFW working with several partner organizations to remove an old concrete weir, which was originally constructed as a recreational "swimming hole" feature at the park. The goals of removing the structure are to restore fish passage and natural channel processes, reduce streambank erosion risk, and reduce future safety concerns associated with the structure.

The project has not changed from what was described at Policy session.

RECOMMENDATION:

Staff respectfully recommends Board approval of the Joint Permit Application.

ATTACHMENTS:

Joint Permit Application – Eagle Fern Weir Removal

Respectfully Submitted,

Sarah Eckman
Interim Director
Business & Community Services

Joint Permit Application

This is a joint application, and must be sent to all agencies (Corps, DSL, and DEQ). Alternative forms of permit applications may be acceptable; contact the Corps and DSL for more information.

Date Stamp

U.S. Army Corps of Engineers Portland District	Oregon Department of State Lands	Oregon Department of Environmental Quality
Action ID Number	Number	

(1) TYPE OF PERMIT(S) IF KNOWN (check all that apply)

Corps: ☐Individual ☒Nationwide No.: 53 ☐Regional General Permit _____ ☐Other (specify):

DSL: ☒Individual ☐GP Trans ☐GP Min Wet ☐ GP Maint Dredge ☐ GP Ocean Energy ☐No Permit ☐Waiver

(2) APPLICANT AND LANDOWNER CONTACT INFORMATION

	Applicant	Property Owner (if different)	Authorized Agent (if applicable) ☑ Consultant ☐ Contractor
Name (Required)	Dave Stewart	Chair Smith	John Davorsky
Business Name	Oregon Dept. of Fish and Wildlife	Clackamas County	Waterways Consulting
Mailing Address 1	17330 SE Evelyn St	2051 Kaen Road	1020 SW Taylor St. #380
Mailing Address 2			
City, State, Zip	Clackamas, OR 97015	Oregon City, OR 97045	Portland, OR 97205
Business Phone	971-673-6035	Parks Contact, Tom Riggs 503-781-3137	Cell: 503-679-1101
Cell Phone			
Fax			
Email	dave.stewart@state.or.us	triggs@clackamas.us	johnd@watways.com

(3) PROJECT INFORMATION

A. Provide the project location.

Project Name	Latitude & Longitude*
Eagle Fern Dam Removal	45.32290°N 122.28811°W

Project Address / Location	City (neaest)	County
27505 SE Eagle Fern Rd Eagle Creek, OR 97022	Estacada	Clackamas

Township	Range	Section	Quarter / Quarter	Tax Lot
3S	4E	11	SW	200

Brief Directions to the Site: Enter Eagle Fern Park on Eagle Creek. The old dam structure is to your right as you enter the park just upstream from a foot bridge crossing Eagle Creek.

B. What types of waterbodies or wetlands are present in your project area? (Check all that apply.)

☑ River / Stream	☐ Non-Tidal Wetland	☐ Lake / Reservoir / Pond
☐ Estuary or Tidal Wetland	☐ Other	☐ Pacific Ocean

Waterbody or Wetland Name**	River Mile	6th Field HUC Name	6th Field HUC (12 digits)
Eagle Creek	8	Clackamas	170900110503

* In decimal format (e.g., 44.9399, -123.0283)
** If there is no official name for the wetland or waterbody, create a unique name (such as "Wetland 1" or "Tributary A").

C. Indicate the project category. (Check all that apply.)

☐ Commercial Development	☐ Industrial Development	☐ Residential Development
☐ Institutional Development	☐ Agricultural	☐ Recreational
☐ Transportation	☑ Restoration	☐ Bridge
☐ Dredging	☐ Utility lines	☐ Survey or Sampling
☐ In- or Over-Water Structure	☐ Maintenance	☐ Other:

(4) PROJECT DESCRIPTION

A. Summarize the overall project including work in areas both in and outside of waters or wetlands.

This instream stream restoration project involves the removal of a low head dam on Eagle Creek to improve fish passage for ESA listed coho, chinook, steelhead and other resident fish and wildlife species. This low head dam structure is very small in relation to what some people may think of as a "dam". It is only 3 feet in height and is composed of concrete reinforced by rebar. There was a very similar sized dam removal project at Metzler Park in the Clackamas basin about 10 years ago. This project only required one day of in-water work to remove the entire structure. We believe this current project will be equally smooth and require minimal impacts to natural resources during construction.

We are removing a full spanning concrete dam (weir) that is eroding around the right bank and creating a hazard for recreationalists at Eagle Fern Park. By removing this fish passage barrier we will be improving passage for adult and juvenile salmonids throughout the migration season. There will be one wood structure placed on the right bank (looking downstream) and on the margin of the right channel to decrease erosional issues at this site, to provide access for the public to the river and to provide additional habitat for migrating and rearing salmonid populations.

The dam demolition sequencing is summarized as follows: Coordinate with ODFW to install fish block nets at upstream and downstream ends of the projects areas. Fish salvaging and relocation will be performed by ODFW before any ground disturbing activities.

Installation of a turbidity curtain will be placed at the downstream end of the work area to minimize fine sediments impacting the reach downstream. The Excavator will slowly work its way across the channel just downstream of the dam and will place bulk bags upstream of the dam as it move across. Once the excavator reaches the left side of the channel it will begin to demo the dam. Once the first half of the demo is complete, the excavator will cross to the other side of the channel to complete the demo from the left bank. Once the left part of the structure is completely removed, the excavator will work back across to the dam and place bulk bags to the side and downstream of the rest of the dam structure.

Another pass through salvage for fish would be completed within that new isolated area. Now, fish would be free to move upstream and downstream through the bypass section along the left side of the channel that we created in the previous step for the remainder of the project.

Then for the remainder of the removal of the dam we will be working in a mostly dewatered channel. There will still be small amounts of water in the area from seepage but there will be no fish in the area and no impacts from any large scale turbidity issues.

The initial removal of the left portion of the dam allows us to bypass the flow and isolate a significant portion of the work area from flowing water. Although we will still be working in the wet we are minimizing the water quality impacts by bypassing the flow and using bulk bags and turbidity curtains to isolate the excavator and dam demo and processing area.

The overall project should last less than two weeks with the in water implementation estimated at 1 week in length. That portion of the park will be closed to the public during the implementation which will occur the week after Labor Day of 2021 in order to minimize impacts to park recreationalists and conduct the work during the lowest flows of the year.

B. Describe work within waters and wetlands.

The dam removal will occur in Eagle Creek at Eagle Fern Park. Eagle Creek is a tributary to the Clackamas River within Lower Columbia River Conservation and Recovery area. Eagle Fern Park is located near River Mile 8 on Eagle Creek and just upstream from the confluence with the North Fork Eagle Creek.

The only jurisdictional areas that occur within the project site are waters of the state with no wetland identified. OHW was determined using the hydraulic model with verification in the field using standard indicators such as tree lines and/or depositional features.

The project set for construction in late summer, will remove a small low head dam that is a full channel spanning structure and is slowly eroding around the right bank bulk head. The removal of the dam will not only benefit endangered salmon in the basin but will decrease a safety hazard for people who use the park mainly during the summer months.

We will access the site from the right bank and the parking area. There is great access here and only one riparian tree that will need to be removed as part of access. This tree will be utilized as part of the large wood structure which will help to stabilize the bank and secure the sandy beach on the right bank just upstream.

We will not be dewatering the channel fully, but will be partially dewatering to remove flows completely. We will need to conduct a fish salvage which will be completed by ODFW Staff and other volunteers as part of the project team. The overall project should last less than two weeks with the in-water work closer to 1 week. That portion of the park will be closed to the public during the implementation which will occur the week after Labor Day of 2021.

C. Construction Methods. Describe how the removal and/or fill activities will be accomplished to minimize impacts to waters and wetlands.

The project set for construction in late summer will remove a small low head dam that is a full channel spanning structure and is slowly eroding around the right bank bulk head. We decided on implementing in the early part of September to do the work during the lowest flows of the year and after labor day when closing the park will have fewer impacts to recreationalists. This summer period will minimize impacts to juvenile salmonids as many of these populations have migrated out of the basin, but also help in decreasing impacts during our fish salvage activities. Lower summer flows will also mean less turbidity and potential impacts to spawning fish later in the season.

By starting at one side of the channel (left), removing a portion of the dam, and working our way across, this allows us to avoid a large scale dewatering action and even larger fish salvage. This also allows our experienced contractors to complete the project quicker and more efficiently. All actions are designed to stay out of the stream as much as possible but we are in a reach that is characterized by a bedrock base and larger substrate so we don't foresee any large turbidity issues. We will be monitoring turbidity to ensure we stay within background levels during the in-water work. Given the stream channel geology, and the great access, we have one of the best reaches to complete the work with minimal short term or long-term impacts to fish, wildlife or the natural function of the channel. There will be no channel grading as natural processes after removal will adjust to natural stream processes.

We are working with Waterways Consulting on this project who designed the removal and will be part of the implementation process. Waterways is one of the most respected and experienced stream restoration companies in the region. This experience will help minimize any potential impacts to the area and will allow us to quickly respond to any unforeseen obstacles that develop as we begin construction.

We will not be fully dewatering the stream channel, but will need to conduct a fish salvage in the partially dewatered area. The overall project should last less than two weeks with the in-water coming closer to 1 week in length. That portion of the park will be closed to the public during the implementation which will occur the week after Labor Day of 2021.

The right bank will be stabilized with grading, seeded and planted with trees where needed to decrease erosion potential during the first season. Within a year it will be almost impossible to even notice there was a dam at this location and by this time we should have juvenile and adult salmon freely migrating through the reach.

(4) PROJECT DESCRIPTION (CONTINUED)

D. Describe source of fill material and disposal locations if known.

The concrete dam structure will likely have some rebar and all of this structure will be taken off site and disposed of in a state approved processing site. Any of the grading on site will be removed if needed as well but most of the bank work will be incorporated into the new bank and large wood structure. There will be no fill material placed into the creek or any lowland areas or wetlands within the park.

The concrete, and all rebar will be removed from the channel and either taken to a recycling facility or to a permanent upland storage facility.

The large wood structure will be placed in the location of the former dam abutment and will utilize a tree generated on-site. Ballast boulders will be sourced from a local quarry and be of sufficient hardness to not degrade in riverine conditions. These boulders will all be placed on top of the tree and above the ordinary high water line (OHWL). The trench that will be dug will be filled mostly by the large wood we are using but there will be some minor backfill to fill the final gaps in the trench.

The fill used for the temporary bulk bags used in dewatering will be imported round river run material, free from fines and suitable for in-channel release following project construction.

E. Construction timeline.

What is the estimated project start date? 9/7/21

What is the estimated project completion date? 9/21/21

Is any of the work underway or already complete? If yes, please describe. ☐ **Yes** ☑ **No**

F. Removal Volumes and Dimensions (if more than 7 impact sites, include a summary table as an attachment)

Wetland / Waterbody Name *	Removal Dimensions					Time Removal is to remain**	Material***
	Length (ft.)	Width (ft.)	Depth (ft.)	Area (sq.ft. or ac.)	Volume (c.y.)		
Eagle Creek	105	9	3	954	45	Perm.	Steel Reinforced Concrete

G. Total Removal Volumes and Dimensions

Total Removal to Wetlands and Other Waters	Length (ft.)	Area (sq. ft or ac.)	Volume (c.y.)
Total Removal to Wetlands			
Total Removal Below Ordinary High Water	105	954.18	45.2
Total Removal Below Highest Measured Tide			
Total Removal Below High Tide Line			
Total Removal Below Mean High Water Tidal Elevation			

H. Fill Volumes and Dimensions (if more than 7 impact sites, include a summary table as an attachment)

Wetland / Waterbody Name*	Fill Dimensions					Time Fill is to remain**	Material***
	Length (ft.)	Width (ft.)	Depth (ft.)	Area (sq. ft. or ac.)	Volume (c.y.)		
Eagle Creek	25	60	3	298	18.9	Perm.	Logs
Eagle Creek	114	3	3	342	28.5	Temp.	Sandbags

(4) PROJECT DESCRIPTION (CONTINUED)

I. Total Fill Volumes and Dimensions

Total Fill to Wetlands and Other Waters		**Length (ft.)**	**Area (sq. ft or ac.)**	**Volume (c.y.)**
Total Fill to Wetlands				
Total Fill Below Ordinary High Water		139	640	47.4
Total Fill Below Highest Measured Tide				
Total Fill Below High Tide Line				
Total Fill Below Mean High Water Tidal Elevation				

*If there is no official name for the wetland or waterbody, create a unique name (such as "Wetland 1" or "Tributary A").
**Indicate whether the proposed area of removal or fill is permanent or, if you are proposing temporary impacts, specify the days, months or years the fill or removal is to remain.
*** Example: soil, gravel, wood, concrete, pilings, rock etc.

(5) PROJECT PURPOSE AND NEED

Provide a statement of the purpose and need for the overall project.

One of the biggest limiting factors for recovering ESA listed salmon and steelhead within the Lower Columbia River basin and tributaries, are fish passage obstructions. There are thousands around the state and the cumulative effect is hugely impactful for native migratory fish. Because of this, the state has identified priorities to benefit fish passage and as an agency ODFW is moving forward in identifying and obtaining funding to fix these barriers to fish. The Eagle Fern site has a very popular swimming hole above the dam structure. We have taken this into account in the design of the project and will be implementing protections that will increase safety for the long-term at this site.

It is because of this safety hazard posed by a failing dam that it was agreed unanimously by Clackamas County Park Staff, County Parks Board and the overall Clackamas County board to remove the dam and let the natural channel morphology recover at this site. Improving fish passage here will allow the natural channel form and function to provide more resiliency for migrating fish throughout Eagle Creek and the North Fork of Eagle Creek. Ultimately this project will be connected to other large wood projects, fish passage projects and numerous work within Eagle Creek sub-basin and the larger Clackamas basin to restore native migratory runs of fish.

(6) DESCRIPTION OF RESOURCES IN PROJECT AREA

A. Describe the existing physical, chemical, and biological characteristics of each wetland or waterbody. Reference the wetland and waters delineation report if one is available. Include the list of items provided in the instructions.

Eagle Creek supports wild populations of ESA listed coho salmon, chinook salmon, winter steelhead, cutthroat trout, lamprey species and various additional resident fish and wildlife species. These fish species use Eagle Creek for spawning, migration, and rearing as they prepare their next phase of their journey. This stream reach is composed of mostly bedrock, cobble and some gravel and sand. The reach has a gradient that might be characterized as a transport reach with limited large wood throughout and numerous riffles and rapids. The stream is surrounded by old forests that are owned and protected by Clackamas county and other large landowners who are all supportive of this project. This project will help to restore natural stream channel function that supports these ESA listed salmon and steelhead species.

B. Describe the existing navigation, fishing and recreational use of the waterbody or wetland.

Eagle Creek and Eagle Fern Park is a popular waterway for anglers and recreationalists in the park and throughout Eagle Creek. The river reach here is used by families and kids floating in the shallow pool upstream of the dam during the summer. There is good access here for anglers and throughout the lower reaches from the main highway. There are also some boaters that use Eagle Creek along with fishing in the creek downstream from this section. We will be using this project as a way to also teach users about restoration and dam removal projects. There will be a kiosk or similar signage created that will help teach park users over time about the project, the stream, the watershed and the benefits from the project.

(7) PROJECT SPECIFIC CRITERIA AND ALTERNATIVES ANALYSIS

Describe project-specific criteria necessary to achieve the project purpose. Describe alternative sites and project designs that were considered to avoid or minimize impacts to the waterbody or wetland.[1]

There were a few alternatives we looked at and discussed prior to moving forward with the accepted alternative you see today.

Alternative 1: The first being the do nothing alternative and leave the site as is. If we went with this alternative we would continue seeing impacts to ESA listed fish from passage timing impacts and the safety hazard would continue to get more dangerous as the structure deteriorates.

Alternative 2: We discussed adding a lot more wood throughout this reach along with the dam removal project. This would have provided more habitat for fish but due to high costs and limitations in working within a bedrock dominated reach we decided this was not a good alternative.

Alternative 3. Remove the dam and do not add any wood. This would have provided less habitat for fish and would not have protected the public access point and beach which was a high priority for Clackamas county to ensure people could still easily and safely use the park and stream.

Alternative 4: We chose to go with alternative 4 which includes complete removal of the dam and one large wood structure. We agreed as a group on this alternative because we gain extra habitat for fish, protect most of the public's water resource and completely remove the dam at a very reasonable cost.

(8) ADDITIONAL INFORMATION

Are there state or federally listed species on the project site?	☒ **Yes**	☐ **No**	☐ **Unknown**
Is the project site within designated or proposed critical habitat?	☒ **Yes**	☐ **No**	☐ **Unknown**
Is the project site within a national Wild and Scenic River ?	☐ **Yes**	☒ **No**	☐ **Unknown**
Is the project site within a State Scenic Waterway?	☐ **Yes**	☒ **No**	☐ **Unknown**

[1] Not required by the Corps for a complete application, but is necessary for individual permits before a permit decision can be rendered.

Is the project site within the 100-year floodplain?	☒ Yes	☐ No	☐ Unknown
If yes to any above, explain in Block 6 and describe measures to minimize adverse effects to those resources in Block 7.			
Is the project site within the Territorial Sea Plan (TSP) Area?	☐ Yes	☒ No	☐ Unknown
If yes, attach TSP review as a separate document for DSL.			
Is the project site within a designated Marine Reserve?	☐ Yes	☒ No	☐ Unknown
If yes, certain additional DSL restrictions will apply.			
Will the overall project involve ground disturbance of one acre or more?	☐ Yes	☒ No	☐ Unknown
If yes, you may need a 1200-C permit from the Oregon Department of Environmental Quality (DEQ).			
Is the fill or dredged material a carrier of contaminants from on-site or off-site spills?	☐ Yes	☒ No	☐ Unknown
Has the fill or dredged material been physically and/or chemically tested?	☐ Yes	☒ No	☐ Unknown
If yes, explain in Block 6 and provide references to any physical/chemical testing report(s).			
Has a cultural resource (archaeological and/or built environment) survey been performed on the project area?	☒ Yes	☐ No	☐ Unknown
Do you have any additional archaeological or built environment documentation, or correspondence from tribes or the State Historic Preservation Office?	☐ Yes	☒ No	☐ Unknown
If yes, provide a copy of the survey and/or documentation of correspondence with this application to the Corps only. Do not describe any resources in this document. Do not provide the survey or documentation to DSL.			

Is the project part of a DEQ Cleanup Site? No☒ Yes☐ Permit number _____

DEQ contact._____

Will the project result in new impervious surfaces or the redevelopment of existing surfaces? Yes ☐ No ☒

If yes, the applicant must submit a post-construction stormwater management plan as part of this application to DEQ's 401 WQC program for review and approval, see https://www.oregon.gov/deq/FilterDocs/401wqcertPostCon.pdf

Identify any other federal agency that is funding, authorizing or implementing the project.

Agency Name	Contact Name	Phone Number	Most Recent Date of Contact
N/A			

List other certificates or approvals/denials required or received from other federal, state or local agencies for work described in this application.

Agency	Certificate / approval / denial description	Date Applied

Other DSL and/or Corps Actions Associated with this Site (Check all that apply.)

☐ Work proposed on or over lands owned by or leased from the Corps (may require authorization pursuant to 33 USC 408). These could include the federal navigation channel, structures, levees, real estate, dikes, dams, and other Corps projects.

☐ State owned waterway — DSL Waterway Lease #:

☐ Other Corps or DSL Permits — Corps # — DSL #

☐ Violation for Unauthorized Activity — Corps # — DSL #

☐ Wetland and Waters Delineation — Corps # — DSL #

Submit the entire delineation report to the Corps; submit only the concurrence letter (if complete) and approved maps to DSL. If not previously submitted to DSL, send under a separate cover letter

(9) IMPACTS, RESTORATION/REHABILITATION, AND COMPENSATORY MITIGATION

A. Describe unavoidable environmental impacts that are likely to result from the proposed project. Include permanent, temporary, direct, and indirect impacts.

The primary goal of this project is restore biological function and aquatic species movement and therefore has very few environmental impacts. There will be no adverse long-term impacts from the project only benefits as the natural stream processes benefit from the dam removal. There are some minor temporary impacts from the project.

The park ground will be disturbed from our equipment and we will have to remove one riparian tree. The right bank will also be partially excavated so equipment can access the dam. There will be some turbidity as small amounts of sand, fines and gravel get displaced during the work but our turbidity barrier will help to minimize any of the negative effects.

The equipment noise may impact other wildlife species as well but given the location at Eagle Fern park we don't foresee any of these impacts as unreasonable. The partners involved with this project have implemented many dam removal projects throughout our region of similar and much larger size and scale. This will help us deal with any issues that might arise as part of the project. The park is already fairly unnatural due to the roads, buildings and human activity. At the end of the day, there will be very little environmental impacts be it temporary or permanent associated with this project.

B. For temporary removal or fill or disturbance of vegetation in waterbodies, wetlands or riparian (i.e., streamside) areas, discuss how the site will be restored after construction to include the timeline for restoration.

We will be using temporary bulk bags around the structure to decrease impacts to the stream channel. We are only setting them on the bed of the channel and not doing any excavation to install them. Furthermore, they will be filled with clean, spawning size gravel which will be spread into the channel upon removal to be mobilized downstream in the winter months.

A small section of the right bank will be graded after we are finished with the instream work. This will be a small area where equipment will access the stream. This grading will meet the natural bank slope and we will stabilize and plant the bank with riparian trees. The access road is part of the current grassy park so there will be no need for planting. We will reseed the grass where needed and clean up the site so it's ready for public access. All of the stabilization work will be completed once the equipment is out of the channel. The bank and new riparian vegetation will be monitored by park staff and any adjustments or additional plantings can easily be made over time.

Compensatory Mitigation

C. Proposed mitigation approach. Check all that apply:

- ☐ Permittee-responsible Onsite Mitigation
- ☐ Permittee-responsible Offsite mitigation
- ☐ Mitigation Bank or In-Lieu Fee Program
- ☐ Payment to Provide (not approved for use with Corps permits)

D. Provide a brief description of proposed mitigation approach and the rationale for choosing that approach. If you believe mitigation should not be required, explain why.

N/A

Mitigation Bank / In-Lieu Fee Information:
Name of mitigation bank or in-lieu fee project:
Type and amount of credits to be purchased:

If you are proposing permittee-responsible mitigation, have you prepared a compensatory mitigation plan?

☐ Yes. Submit the plan with this application and complete the remainder of this section.

☐ No. A mitigation plan will need to be submitted (for DSL, this plan is required for a complete application).

Mitigation Location Information (Fill out only if permittee-responsible mitigation is proposed)

Mitigation Site Name/Legal Description	Mitigation Site Address	Tax Lot #
County	City	Latitude & Longitude (in DD.DDDD format)

Township	Range	Section	Quarter/Quarter

(10) ADJACENT PROPERTY OWNERS FOR PROJECT AND MITIGATION SITE		
☐**Pre-printed mailing labels of adjacent property owners attached separately (if more than 30).**	**Project Site Adjacent Property Owners**	**Mitigation Site Adjacent Property Owners**
Contact Name **Address 1** **Address 2** **City, ST ZIP Code**	Weyerhaeuser 3401 Industrial Way Longview, WA 98632	
Contact Name **Address 1** **Address 2** **City, ST ZIP Code**	BLM 1717 Fabry Rd SE Salem, OR 97306	
Contact Name **Address 1** **Address 2** **City, ST ZIP Code**	Soil and Water Conservation District 22055 S Beavercreek Rd Beavercreek, OR 97004	

(11) CITY/COUNTY PLANNING DEPARTMENT LAND USE AFFIDAVIT (TO BE COMPLETED BY LOCAL PLANNING OFFICIAL)

I have reviewed the project described in this application and have determined that:

- ☐This project is not regulated by the comprehensive plan and land use regulations
- ☐This project is consistent with the comprehensive plan and land use regulations
- ☐This project is consistent with the comprehensive plan and land use regulations with the following:
  - ☐Conditional Use Approval
  - ☐Development Permit
  - ☐Other Permit (explain in comment section below)
- ☐This project is not currently consistent with the comprehensive plan and land use regulations. To be consistent requires:
  - ☐Plan Amendment
  - ☐Zone Change
  - ☐Other Approval or Review (explain in comment section below)

An application or variance request has ☐ has not ☐been filed for the approvals required above.

Local planning official name (print) Steve Hanschka	Title Senior Planner	City / County Oregon City / Clackamas
Signature	Date	
Comments:		

(12) COASTAL ZONE CERTIFICATION

If the proposed activity described in your permit application is within the Oregon Coastal Zone, the following certification is required before your application can be processed. The signed statement will be forwarded to the Oregon Department of Land Conservation and Development (DLCD) for its concurrence or objection. For additional information on the Oregon Coastal Zone Management Program and consistency reviews of federally permitted projects, contact DLCD at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301 or call 503-373-0050 or click here.

CERTIFICATION STATEMENT

I certify that, to the best of my knowledge and belief, the proposed activity described in this application complies with the approved Oregon Coastal Zone Management Program and will be completed in a manner consistent with the program.

Print /Type Applicant Name	Title
Applicant Signature	Date

(13) SIGNATURES

Application is hereby made for the activities described herein. I certify that I am familiar with the information contained in the application, and, to the best of my knowledge and belief, this information is true, complete and accurate. I further certify that I possess the authority to undertake the proposed activities. By signing this application I consent to allow Corps or DSL staff to enter into the above-described property to inspect the project location and to determine compliance with an authorization, if granted. I hereby authorize the person identified in the authorized agent block below to act in my behalf as my agent in the processing of this application and to furnish supplemental information in support of this permit application. I understand that the granting of other permits by local, county, state or federal agencies does not release me from the requirement of obtaining the permits requested before commencing the project. I understand that payment of the required state processing fee does not guarantee permit issuance.

To be considered complete, the fee must accompany the application to DSL. The fee is not required for submittal of an application to the Corps.

Fee Amount Enclosed	$

Applicant Signature (required) must match the name in Block 2	
Print Name	Title
Signature	Date
Authorized Agent Signature	
Print Name	Title
Signature	Date

Landowner Signature(s)[2]	
Landowner of the Project Site (if different from applicant)	
Print Name	Title
Signature	Date
Landowner of the Mitigation Site (if different from applicant)	
Print Name	Title
Signature	Date
Department of State Lands, Property Manager (to be completed by DSL)	
If the project is located on state-owned submerged and submersible lands, DSL staff will obtain a signature from the Land Management Division of DSL. A signature by DSL for activities proposed on state-owned submerged/submersible lands only grants the applicant consent to apply for a removal-fill permit. A signature for activities on state-owned submerged and submersible lands grants no other authority, express or implied and a separate proprietary authorization may be required.	
Print Name	Title

[2] Not required by the Corps.

Signature	Date

(14) ATTACHMENTS

- ☐ Drawings
  - ☐ Location map with roads identified
  - ☐ U.S.G.S topographic map
  - ☐ Tax lot map
  - ☐ Site plan(s)
  - ☐ Plan view and cross section drawing(s)
  - ☐ Recent aerial photo
  - ☐ Project photos
  - ☐ Erosion and Pollution Control Plan(s), if applicable
  - ☐ DSL / Corps Wetland Concurrence letter and map, if approved and applicable
- ☐ Pre-printed labels for adjacent property owners (Required if more than 30)
- ☐ Incumbency Certificate if applicant is a partnership or corporation
- ☐ Restoration plan or rehabilitation plan for temporary impacts
- ☐ Mitigation plan
- ☐ Wetland functional assessments, if applicable
  - ☐ Cover Page
  - ☐ Score Sheets
  - ☐ ORWAP OR, F, T, & S forms
  - ☐ ORWAP Reports
  - ☐ Assessment Maps
  - ☐ ORWAP Reports: Soils, Topo, Assessment area, Contributing area
- ☐ Stream Functional Assessments, if applicable
  - ☐ Cover Page
  - ☐ Score Sheets
  - ☐ SFAM PA, PAA, & EAA forms
  - ☐ SFAM Report
  - ☐ Assessment Maps
    - ☐ Aerial Photo Site Map and Topo Site Map (Both maps should document the PA, PAA, & EAA)
- ☐ Compensatory Mitigation (CM) Eligibility & Accounting Worksheet
  - ☐ Matching Quickguide sheet(s)
  - ☐ CM Eligibility & Accounting sheet
- ☐ Alternatives analysis
- ☐ Biological assessment (if requested by the Corps project manager during pre-application coordination)
- ☐ Stormwater management plan (may be required by the Corps or DEQ)
- ☐ Other
  - ☐ Please describe:

For U.S. Army Corps of Engineers send application to:

USACE Portland District
ATTN: CENWP-ODG-P
PO Box 2946
Portland, OR 97208-2946
Phone: 503-808-4373
portlandpermits@usace.army.mil

Counties:
Baker, Benton, Clackamas, Clatsop, Columbia, Gilliam, Grant, Hood River, Jefferson, Lincoln, Linn, Malheur, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Washington, Wheeler, Yamhill

U.S. Army Corps of Engineers
ATTN: CENWP-ODG-E
211 E. 7th AVE, Suite 105
Eugene, OR 97401-2722
Phone: 541-465-6868
portlandpermits@usace.army.mil

Counties:
Coos, Crook, Curry, Deschutes, Douglas, Jackson, Josephine, Harney, Klamath, Lake, Lane

For Department of State Lands send application to:

West of the Cascades:
Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
Phone: 503-986-5200

East of the Cascades:
Department of State Lands
1645 NE Forbes Road, Suite 112
Bend, Oregon 97701
Phone: 541-388-6112

For Department of Environmental Quality e-mail application to:

ATTN: DEQ 401 Certification Program
Water Quality
700 NE Multnomah St, Suite 600
Portland, OR 97232
401applications@deq.state.or.us

INSTRUCTIONS FOR PREPARING THE JOINT APPLICATION

This is a joint application and must be sent to all agencies (Corps, DSL, and DEQ), who administer separate permit or certification processes. For questions regarding these instructions or the form, contact the Corps, DSL and/or DEQ or refer to the following online resources:

- DSL's Removal-Fill Guide; or,
- The Corps Regulatory website: http://www.nwp.usace.army.mil/Missions/Regulatory.aspx
- DEQ's 401 Water Quality Certification website: https://www.oregon.gov/deq/wq/wqpermits/Pages/Section-401-Certification.aspx

General Instructions and Tips

- Provide the information in the appropriate blocks of the application form. If you need more space, provide a summary in the space provided and attach additional detail as an appendix to the application. Each appendix or attachment must reference which application block number it pertains to.
- Not all items on the application form will apply to all projects.
- Electronic submittal of applications and supporting material is preferred by the Corps. Both electronic and hard copies must be in 8 ½ x 11-inch sized format and reproducible in black and white. Currently DSL does not accept electronic submittals. DSL will accept color figures and 11 X 17. Use either all double sided or all single sided paper. Do not use staples or dividers. NOTE: If the electronic submittal of application and associated documents is 10 megabytes or more, check with each agency for how best to submit the document to that agency.
- **FEES:** Fees for water quality certification apply. Nationwide projects approved by DEQ will incur a fee of $985. Others will be evaluated on a case-by-case basis: https://www.oregon.gov/deq/wq/wqpermits/Pages/Section-401-Fees.aspx.

For complex projects or for those that may have more than minimal impacts, additional information may be necessary to complete the evaluation and make a permit decision. Alternative forms of permit applications may be acceptable; contact the Corps and DSL for more information.

Section 1. Type of Permit(s) if Known
If known, indicate the type of permit/authorization applying for.

Section 2. Applicant and Landowner Contact Information
Applicant: The applicant is the responsible party. If the applicant is an agency, business entity or other organization, indicate the name of the organization and a person that has the authority to sign the application. If applicant is a partnership or corporation, the applicant name must match the Incumbency Certificate, and the business name as listed on OR Secretary of State business registry. Applicant must not be "doing business as" or has an "assumed business name." In such cases the applicant must be an individual.
Applicant Contact Name: If the applicant is a business, provide the contact name for an individual representing the business.
Authorized Agent: An authorized agent is someone who has permission from the applicant to represent their interests and supply information to the agencies. An agent can be a consultant, an attorney, builder, contractor, or any other person or organization. An authorized agent is optional.
Landowner: Provide landowner information if different from the applicant. DSL requires the landowner's signature, unless the project qualifies as a linear project, e.g. road, pipeline, utility.

Section 3. Project Information
A. Provide location information. Latitude and longitude must be reported in decimal format and can be found by zooming in to your respective project location and reading off the coordinates displayed on the bottom many maps, such as Google Earth.

B. Provide information on wetlands and waterbodies within the project area. Indicate the category of activities that make up your project. For projects with multiple locations, provide latitude and longitude for each location. For linear projects, provide the latitude and longitude for the start and end points.

Section 4. Project Description

A. Overall Description: Provide a description of the overall project, including:

- All associated work with the project both outside and within waters or wetlands.
- Total ground disturbance for all associated work (i.e., area and volume of ground disturbance).
- Total area of impervious surfaces created or modified by the project, if applicable.

B. Work within Waters and Wetlands: Provide a description of the proposed work within waters and wetlands, including:

- Each removal or fill activity proposed in waters or wetlands, as well as any construction or maintenance of in-water or over-water structures.
- The number and dimensions of in-water or over-water structures (i.e., pilings, floating docks) proposed within waters or wetlands.

C. Construction Methods: Describe how the removal and/or fill activities will be accomplished, including the following:

- Construction methods, equipment to be used, access and staging areas, etc.
- Measures you will use during construction to minimize impacts to the waterbody or wetland. Examples may include isolating work areas, controlling construction access, site specific erosion and sediment control methods, site specific best management practices, and using specialized equipment or materials. Attach work area isolation and/or erosion and pollution control plans, if applicable.

D. Fill Material and Disposal: Provide a description of fill material and procedure for disposal of removed material, including:

- The source(s) of fill materials (if known).
- Locations for disposal area(s) for dredged material, if applicable. If dredged material is to be discharged on an upland site, identify the site and the steps to be taken (if necessary) to prevent runoff from the dredged material back into jurisdictional waters. If using an upland disposal area that is not a Department of Environmental Quality (DEQ)-regulated landfill, a Solid Waste Letter of Authorization or a Beneficial Use Determination from DEQ may be required.

E. Construction Timing: Provide the proposed start and completion dates for the project. Describe project work that is already complete, if applicable.

F. – I. Summary of Removal and Fill Activities: Summarize the dimensions, volume and type/composition of material being placed or removed in each waterbody or wetland. Describe each impact on a separate row. For instance, if two culverts are being removed from Clear Creek, use two rows. Add extra rows if needed or include an attachment.

The DSL and the Corps use different elevations for determining whether an activity in tidal waters is regulated by the State's Removal-Fill law, the Clean Water Act, and/or the Rivers and Harbors Act. DSL regulates activities below the highest measured tide. The Clean Water Act applies below the high tide line. The Rivers and Harbors Act applies below the mean high water.

If jurisdictional limits are not the same for each agency, prepare a table for each agency stating impacts within that agency's jurisdiction.

Section 5. Project Purpose and Need
Explain the purpose and need for the project. Also include a brief description of any related activities needed to accomplish the project objectives.

The following items are required by DSL, as applicable:
- If the removal-fill would satisfy a public need and the applicant is a public body, include any pertinent findings regarding public need and benefit.
- If the project involves fill in the estuary for a non-water dependent use, explain how the project is for public use and/or satisfies a public need.
- If the project is located within a marine reserve or marine protected area, explain how the project is needed to study, monitor, evaluate, enforce or protect the designated area.

Section 6. Description of Resources in Project Area
Territorial Sea: For activities in the Territorial Sea (mean lower low water seaward 3 nautical miles), provide a separate evaluation of the resources and effects determination.

For each wetland, include:
- Whether the wetland is freshwater or tidal, and the Cowardin class and Hydrogeomorphic (HGM) class.
- Source of hydrology and direction of flow (if any).
- Dominant plant species by layer (herb, shrub, tree).
- Assessment of the hydrologic, water quality, fish habitat, aquatic habitat, and ecosystem support functions and values of the wetland(s) to be permanently impacted. The assessment should be attached as a separate Excel document.
    - DSL requires the use of ORWAP for wetland impacts over 0.2 acre and any wetland that is an Aquatic Resource of Special Concern (ARSC), unless the impacts are to Agate Desert Vernal Pools (VPs). See Appendix B of the Removal Fill Guide for a list of ARSCs. The Vernal Pool Assessment Method is required for all VPs. For impacts to wetlands less than 0.2 acre that are not ARSCs or VPs Best Professional Judgment (BPJ) may be used.
- Identify any Aquatic Resources of Special Concern (ARSC) in or near the project area. ARSCs include alkali wetlands, bogs, cold water habitat, fens, hot springs, interdunal wetlands, kelp beds, mature forested wetlands, native eelgrass beds, off-channel habitats (alcoves and side channels), ultramafic soil wetlands, vernal pools (including Willamette Valley, Medford area, Modoc basalt, and Columbia Plateau vernal pools), wet prairies, or wooded tidal wetlands. See Appendix B of the Removal Fill Guide for a list of ARSCs.
- Include relevant summary information from the wetland delineation report if available. Provide a copy of the wetland delineation report to **the Corps,** if not previously provided to the Corps. If a delineation report has not been previously submitted to DSL, then submit to DSL under a separate cover.
- Describe existing uses, including fish and wildlife use (type, abundance, period of use, and significance of site).
- Next major downstream waterbody name.

For rivers, streams, other waterbodies, lakes and ponds, include a description of, as applicable:
- Streamflow regime (e.g., perennial year-round flow, intermittent seasonal flow, ephemeral event-driven flow). If flow is ephemeral, provide streamflow assessment data sheet or other information that supports your determination.
- Field indicators used to identify the Ordinary High Water Mark (OHWM).
- Channel and bank conditions.
- Type and condition of riparian (streamside) vegetation.

- Channel morphology (structure and shape).
- Stream substrate.
- Assessment of the hydrologic, geomorphic, biologic and water quality functions and values of waters to be permanently impacted.
    - DSL requires use of the Stream Function Assessment Methodology (SFAM) for wadable non-tidal streams. SFAM should be attached as a separate Excel document. For impacts to non-wadable or tidal streams, BPJ can be used. Sections 2.2 through 2.3 of the SFAM User Manual give guidance for the functions and values to be addressed for all streams, even if SFAM does not apply.
- Identify any Aquatic Resources of Special Concern (ARSC) in or near the project area. ARSCs include alkali wetlands, bogs, cold water habitat, fens, hot springs, interdunal wetlands, kelp beds, mature forested wetlands, native eelgrass beds, off-channel habitats (alcoves and side channels), ultramafic soil wetlands, vernal pools (including Willamette Valley, Medford area, Modoc basalt, and Columbia Plateau vernal pools), wet prairies, or wooded tidal wetlands.
- Fish and wildlife use (type, abundance, period of use, and significance of site).
- Water quality impairments, including waterways adjacent to impacted wetlands and waterway to be impacted and next major downstream waterbody

Section 7. Project Specific Criteria and Alternatives Analysis
Provide an explanation describing how impacts to waters and wetlands are being avoided and minimized on the project site. For DSL, the alternatives analysis must include:
- Project-specific criteria that are needed to accomplish the stated project purpose.
- A range of alternative sites and designs that were considered with less impact.
- An evaluation of each alternative site and design against the project criteria and a reason for why the alternative was not chosen.
- If the project involves fill in an estuary for a non-water dependent use, a description of alternative non-estuarine sites must be included.

The level of rigor required in this analysis should be commensurate with the level of impact proposed. Please note that additional information regarding alternatives may be necessary for Corps Individual Permits to comply with the Clean Water Act Section 404(b)(1) Guidelines. Please check with your local Corps contact early in the planning process to determine what level of analysis is required. An alternative analysis is not required for a complete application by the Corps; however, it may be required before a permit decision can be rendered.

Section 8. Additional Information
Any additional information you provide helps the reviewer(s) understand your project and the other approvals or reviews that may be required.

Section 9. Impacts, Restoration/Rehabilitation, and Compensatory Mitigation
A. Description of Impacts: Clearly identify the permanent, temporary, direct and indirect impacts. Provide a written analysis of potential changes the project may make to the hydrologic characteristics of the affected wetlands or waterbodies, and an explanation of measures taken to avoid or minimize any adverse effects of those changes, such as: impeding, restricting or increasing flows; relocating or redirecting flow; and potential flooding or erosion downstream of the project. Provide a table summarizing permanent and temporary impacts by HGM and Cowardin Classifications.

B. Site Restoration/Rehabilitation: For temporary disturbance of soils and/or vegetation in waterbodies, wetlands or riparian (streamside) areas, discuss how you will restore the site after construction. This may include the following:
- Grading plans to restore pre-existing elevations.

- Planting plans and species list (native species only) to replace vegetation in riparian or wetland areas.
- Maintenance and monitoring plans to document restoration to wetland condition and/or vegetation establishment.
- Associated erosion control for site stabilization.

C.-D. Compensatory Mitigation. Describe your proposed compensatory mitigation approach or explain why you believe compensatory mitigation is not required. If proposing permittee-responsible mitigation for permanent impacts to jurisdictional waters, see OAR 141-085-0705 and 33 CFR 332.4(c) for plan requirements. The Oregon Explorer Aquatic Mitigation topic page and map viewers may be a helpful resource.

For activities involving discharges of dredged or fill material into waters of the United States, the Corps requires the application to include a statement describing how impacts to waters of the United States are to be avoided and minimized. The application must also include either a statement describing how impacts to waters of the United States are to be compensated for or a statement explaining why compensatory mitigation should not be required for the proposed impacts.

Section 10. Adjacent Property Owners for Project and Mitigation Site(s)
Names and addresses for properties that are adjacent to the project site and permittee responsible mitigation site (if applicable), are required. "Adjacent" means those properties that share or touch upon a common property line or are across the street or stream. If more than 30, attach pre-printed labels. A list of property owners may be obtained by contacting the county tax assessor's office.

Section 11. City/County Planning Department Land Use Affidavit
This section is required to demonstrate land use compatibility for removal fill permits and water quality certifications. Provide this form to your local planning official for them to complete and sign.

Section 12. Coastal Zone Certification
Your signature for this statement is **required** for projects within the coastal zone (generally, west of the summit of the Coast Range).

Section 13. Signatures
The application **must** be signed by the responsible party as identified in section 1. DSL also requires the landowner's signature. Linear Facilities (e.g. road, pipeline, utility) do not require landowner signature for the impact sites; signatures are required for mitigation sites.

Section 14: Attachments
Project Drawings. A complete application must include a location map, site plan, and plan view and cross-section drawings. DSL also requires a recent aerial photo. All drawings should be clear, legible, and to scale. For the Corps, drawings must be on 8.5 x 11-inch paper and must be in black and white or clearly reproducible in black and white. DSL will accept color and 11 x 17, but all figures must be clear when reproduced in black and white. While illustrations need not be professionally prepared, they should be clear, accurate, and contain all necessary information, as follows:

Location maps (with project boundaries, including staging and construction access, scale bar and north arrow on all):
- Location map with roads identified
- U.S.G.S. Topographic map
- Tax lot map

Site plan(s), including:
- Entire project site and activity areas, which includes staging and construction access areas
- Existing and proposed contours
- Stormwater outfalls and other related features
- Location of Ordinary High Water Mark, wetland boundaries, and other jurisdictional boundaries. Clearly identify temporary, permanent, direct and indirect impact areas within waterbodies and wetlands
- Scale bar, legend, and north arrow
- Location of staging areas and construction access
- Location of cross section(s), as applicable
- Location of mitigation area, if applicable

Cross section drawing(s), including:
- Existing and proposed elevations
- Clearly identify temporary, permanent, direct and indirect impact areas within waterbodies and wetlands
- Ordinary High Water Mark, wetland boundaries, and other jurisdictional boundaries
- Scale bar (horizontal and vertical scale)

Recent Aerial Photo
- 1:200 resolution, or, if not available for your site, highest resolution possible

DSL Wetland Concurrence (map and letter only for DSL; the Corps requires the full wetland/waters delineation report if not already submitted)

Mitigation documents including:
- Functional assessment results for each impacted resource and mitigation area
    - Results should include: Cover sheet, Score Sheet, assessment area maps
- Eligibility and Accounting Worksheet
    - Matching "Quickguide" sheet(s)
    - Compensatory Mitigation (CM) Eligibility & Accounting sheet

Do NOT submit the following items to DSL (unless specifically requested by DSL for your project):
- Wetland delineation report
- Biological assessment
- Cultural/archeological reports
- Stormwater calculations
- Geotechnical reports
- Marketing reports
- Contract agreements
- Applications for other agencies such as local land use applications
- Contractor/construction specifications
- Other extraneous drawings and information

CLACKAMAS COUNTY

BUSINESS & COMMUNITY SERVICES
150 BEAVERCREEK ROAD
OREGON CITY, OR 97045
WWW.CLACKAMAS.US/BCS
SARAH ECKMAN, INTERIM DIRECTOR

April 15, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Memorandum of Understanding between Oregon Department of Fish and Wildlife and Clackamas County for the Eagle Fern Weir Removal Project

Purpose/Outcome	BCS – County Parks requests BCC Chair signature on a Memorandum of Understanding between Oregon Department of Fish and Wildlife and Clackamas County for the Eagle Fern Weir Removal project
Dollar Amount and Fiscal Impact	BCS – County Parks will pay $960 toward the weir removal project. All remaining project costs of the $129,000 project are being paid for by other parties.
Funding Source	BCS - County Parks budget
Duration	Project scheduled to be completed by 11/30/2021.
Previous Board Action/Review	Board approved support for the project at the 3/23/2021 Policy Session.
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? Supporting this project aligns with the BCS strategic result of maintaining clean, safe, healthy parks by permitting a project to move forward which improves fish passage, restores natural stream function, and mitigates public safety concerns related to the weir as it ages. 2. How does this item align with the County's Performance Clackamas goals? Supporting this project aligns with the Performance Clackamas strategic priority of Honoring our Natural Resources by supporting improved fish passage and restoration of natural stream function.
Counsel Review	*4/5/2021 A.R.N.*
Procurement Review	1. Was the item processed through Procurement? yes ☐ no x 2. If no, provide brief explanation: Item is a Memorandum of Understanding and not subject to procurement.
Contact Person	*Tom Riggs, BCS/Parks and Forestry Manager, 503-781-3137, triggs@clackamas.us*
Contract No.	*N/A*

BACKGROUND:

On 3/23/2021, in a Policy session, BCS - County Parks, and Oregon Department of Fish & Wildlife (ODFW) staff presented a project proposal for removing a weir (dam) at Eagle Fern County Park, and requested a "Landowner Letter of Support". After the Board approved sending the letter of support, ODFW provided further clarification to Parks staff that they were looking for a signature on a "Memorandum of Understanding" and a "Joint Permit Application". Recognizing that these documents were more than a simple letter of support, BCS staff felt it necessary to bring these before you at Administrator's Issues prior to submittal for approval at a Business Meeting.

As discussed, the project involves ODFW working with several partner organizations to remove an old concrete weir, which was originally constructed as a recreational "swimming hole" feature at the park. The goals of removing the structure are to restore fish passage and natural channel processes, reduce streambank erosion risk, and reduce future safety concerns associated with the structure.

The project has not changed from what was described at Policy session.

RECOMMENDATION:

Staff respectfully recommends Board approval of the Memorandum of Understanding.

ATTACHMENTS:

Memorandum of Understanding – Eagle Fern Weir Removal

Respectfully Submitted,

Sarah Eckman
Interim Director
Business & Community Services

Oregon
Kate Brown, Governor

Department of Fish and Wildlife
Fish Division
4034 Fairview Industrial Drive SE
Salem, OR 97302
503-947-6200
Fax: 503-947-6202
www.dfw.state.or.us

MEMORANDUM OF UNDERSTANDING
[Oregon Department of Fish and Wildlife]
And Clackamas County

Eagle Fern Dam Removal
P-02-0672
ATTN: Clackamas County Commission Chair Smith
2051 Kaen Road
Oregon City, OR 97045

Chair Smith,

Re: Memorandum of Understanding ("MOU") for Eagle Fern Dam, P-02-0672.

This MOU confirms that upon signature by Clackamas County, the county intends to provide access to county property and cooperate with the Oregon Dept of Fish & Wildlife (ODFW) to allow ODFW and their designee, to remove an old concrete and rock dam located in Eagle Creek on the Eagle Fern County Park property at Eagle Creek, Oregon 97022. The location and project details will be outlined in the DSL Joint Removal/Fill Permit. The signed DSL Joint Permit will authorize the project for fill and removal actions from beginning to completion, with the OREGON DEPARTMENT OF FISH AND WILDLIFE (applicant), and CLACKAMAS COUNTY (owner).

The parties agree to the following terms and conditions which shall govern ODFW's use of Clackamas County's property:

1. Property: The real property that is the subject of this MOU (the "Property") is generally described as follows: Eagle Fern County Park Area 1, beach, and weir area. A map of the Property, the project area, and expected ingress and egress access routes is attached hereto as Exhibit A and incorporated by this reference herein.
2. Scope of Use: ODFW shall have the right to use the Property solely for the purposes of removing an old concrete and rock dam located in Eagle Creek, subject to the terms and conditions of the DSL Joint Removal/Fill Permit, and such other uses as are reasonably related to the same. Permitted uses include, but are not limited to, designing, surveying, dam removal, remediation, and assessments to determine the adequacy of construction and compliance with project plans and provisions of this MOU. ODFW, and their designee, is further authorized to bring all personnel, equipment, and other personal property onto the Property as may be reasonably necessary for the purposes described above. ODFW shall operate and maintain the Property and store materials thereon in a neat, orderly way in compliance with all applicable federal, state, and local laws. ODFW's use of the Property shall, to the maximum extent commercially reasonable, avoid unnecessary damage or injury to the Property. Any other use of the Property is unauthorized and shall constitute a trespass of County property.
3. Consideration: There is no monetary consideration for this MOU. ODFW is solely responsible for all costs and expenses, including third party contractor costs, associated with the purposes of removing an old concrete and rock dam located in Eagle Creek, except

for the floodplain development permit fee Clackamas County has agreed to cover.

4. Term: the authorization granted herein shall terminate on the earlier of (i) completion of the removal of the concrete and rock dam located in Eagle Creek or (ii) 11/30/2021.
5. Compliance with Applicable Law. ODFW shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to ODFW's use of the Property.
6. Prior Approvals. ODFW shall obtain all necessary permits and approvals from all federal, state, and local governments prior to or concurrent with applying to Clackamas County. Clackamas County may, in its sole discretion, require ODFW to demonstrate such approvals as a condition precedent to ODFW's use of the Property.
7. Condition of Property: Clackamas County makes no representations or warranties, express or implied, as to the condition of the Property or its fitness for any particular use by ODFW.
8. Cleaning and Repair Costs: Upon completion of the project or termination of this MOU, ODFW will remove all equipment and personal property brought onto the Property. ODFW will use reasonable care to prevent damage to the Property. ODFW shall be responsible for any cleaning, repair, or remediation costs arising from or related to ODFW's use of the Property.
9. Reservation of Rights: Clackamas County reserves all rights of every kind and nature whatsoever in connection with use of the Property by ODFW. Provided, however, that Clackamas County will not unreasonably interfere with ODFW's use of the Property authorized under this MOU.
10. Oregon Law and Forum. This MOU, and all rights, obligations, and disputes arising out of it, will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim, action, or suit that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Marion County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
11. No Agency Status. Neither ODFW nor ODFW's employees, members, or invitees shall be considered to be employees, officers, or agents of Clackamas County for any purpose.
12. Integration. This MOU contains the entire agreement between Clackamas County and ODFW and supersedes all prior written or oral discussions or agreements.
13. Amendments. County and User may amend this Agreement at any time. No amendment shall bind either party unless in writing and signed by all parties. Any such amendment shall be effective only in the specific instance and for the specific purpose given.
14. Waiver. Failure of either to enforce any provision of this MOU shall not constitute a waiver or relinquishment by that party of the right to such performance in the future nor of the right to enforce any other provision of this Agreement. Waiver of any default under this Agreement by either party shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this MOU.
15. No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this MOU, each party shall be responsible for its own attorneys' fees and expenses.
16. Contribution/Third Party Liability.
    a. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a party (the

"Notified Party") with respect to which the other party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section 10 with respect to the Third Party Claim.

b. With respect to a Third Party Claim for which ODFW is jointly liable with Clackamas County (or would be if joined in the Third Party Claim), ODFW shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Clackamas County in such proportion as is appropriate to reflect the relative fault of ODFW on the one hand and of Clackamas County on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODFW on the one hand and of Clackamas County on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODFW's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

Any changes, additions or modifications to this MOU should be properly executed in writing. Applicant (ODFW) is responsible for coordinating access for construction with the landowner. By signing below, the parties acknowledge and have agreed to the terms set forth above.

Please sign at the bottom of this page and return it to the address above or your Field Coordinator. The OREGON DEPARTMENT OF FISH AND WILDLIFE looks forward to working with you.

Sincerely,

ODFW

Agreed and accepted: Clackamas County

By:
Title: