



Oregon

Kate Brown, Governor

Department of Fish and Wildlife

Fish Division

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November 25, 2020

Jason Waters
City of Sherwood
City Engineer
22560 SW Pine Street
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WatersJ@SherwoodOregon.gov



**Re: City of Sherwood Culvert Installation Project Unnamed Tributary to Cedar Creek;
ODFW Fish Passage Approval PA-02-0297**

Mr. Jason Waters,

The Oregon Department of Fish and Wildlife (ODFW) has reviewed, as required by Oregon Fish Passage Law 509.585, the fish passage design plans proposed by the City of Sherwood's (Applicant) Culvert Installation Project on an unnamed tributary to Cedar Creek (Project). The Applicant proposes a construct a new bottomless arch culvert installation project in and along an unnamed tributary to Cedar in the City of Sherwood Oregon. Cedar Creek is a direct tributary to the Tualatin River in Washington County. Jacobs Engineering Group has been responsible for project coordination and permit acquisition. Project installation is anticipated during the ODFW in-water work window during 2021.9

This culvert installation action has triggered the state's fish passage rules and regulations. ODFW Fish Passage Program staff have reviewed the fish passage plan and the corresponding engineering design plans associated with the culvert installation project. We have determined the design plans are consistent with the state's fish passage design criteria, as defined in OAR 635-412-0035(1), (3) and (10) and therefore approve the project as required by Oregon fish passage law (ORS 509.585).

This ODFW fish passage authorization (PA-02-0297) is contingent on specific operational items which include:

1. The Applicant or your designee, shall contact and coordinate with ODFW at least two-weeks prior to any in-water work activities.
2. All in-water work associated with the project shall be performed during the ODFW in-stream work window, or as negotiated with ODFW.
3. Temporary Water Management and subsequent fish salvage and recovery are required prior to all in-water work activities (defined as all work at or below the Ordinary High Water elevation) associated with the project, assuming the work area is subject to surface flow.
4. Pursuant to OAR 635-412-0035 (10e), prior to in-stream construction activities, all fish must be safely collected, removed from the construction site or dewatered reach, and placed in the flowing stream by an authorized person in possession of a separate valid permit issued by ODFW. An Oregon Scientific Take Permit (OR-STP) from ODFW is required

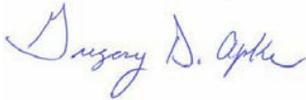
to conduct fish salvage in Oregon and other additional authorization may be needed from NMFS or USFWS if work is in ESA waters. OR-STP's can take up to 4-6 weeks for processing and can be applied for at: <https://apps.nmfs.noaa.gov/index.cfm> or if you have questions about OR-STP permitting, please contact fish.research@state.or.us.

5. Volitional downstream passage of native migratory fish shall be maintained throughout and during implementation of the project.
6. At any point along, into or through the project, where fish may be exposed to materials necessary to construct the project (concrete, steel, etc.), all potential sharp or abrasive edges and surfaces shall be made smooth as to preclude harm or physical injury to fish.
7. The City of Sherwood shall be responsible for all maintenance required such that the project provides adequate passage for native migratory fish. Adequate fish passage is defined as volitional fish passage of native migratory fish species between the fish passage design flows (5% to the 95% exceedence flows) for the project. If monitoring by you, your designee or the ODFW indicates that adequate fish passage is not being provided, the City of Sherwood in consultation with ODFW, shall determine the cause and, during a work period approved by ODFW, shall modify the project to rectify problems as necessary.
8. Failure to maintain fish passage through the project area(s) and for the duration of this approval shall constitute a violation of this approval and applicable fish passage laws (ORS 509.585 and 509.610).
9. Monitoring and reporting on the effectiveness of passage of fish is required for the project. The City of Sherwood or your designee shall monitor and report the effectiveness of fish passage during, throughout and after completion of the project, unless otherwise noted by this approval. This shall entail monitoring of the project during construction, efficacy of fish passage and channel bed stability throughout the project area(s) after construction and project completion. Monitoring will be performed by a qualified fisheries biologist to determine whether or not the project is functioning as it was designed to function for fish passage. Fish passage monitoring reports shall report on the effectiveness of passage of native migratory fish species through the project area and at a variety of fish passage flows. Monitoring and reporting shall coincide with the time of the year when native migratory fish species are migrating throughout the project area. Monitoring and reporting shall consist of a summary of the fish passage conditions and fish passage performance with particular emphasis on channel bed stability, flow velocities, water depths, and the volitional unimpeded bi-directional passage of native migratory fish during the appropriate fish passage design (5% to the 95% exceedence) flows through the project area(s).
10. Monitoring reports shall be completed and submitted by you or your designee, to the ODFW Statewide Fish Passage Program Coordinator and the ODFW North Willamette District Fish Biologist annually for a period of 5-years after the completion of the project.
11. If monitoring, by the Applicants, your designee, or Department indicates that volitional fish passage is questionable or not provided, the Applicants in consultation with the Department, shall determine the cause and, during a work period approved by the Department, shall modify the project to rectify fish passage problems as necessary.
12. Failure to monitor fish passage for the duration of the ODFW fish passage approval shall constitute a violation of this approval and applicable fish passage laws (ORS 509.585 and 509.610).
13. The Department shall be allowed to inspect the project at reasonable times for the duration of this approval. Unless prompted by emergency or other exigent circumstances, inspection shall be limited to regular and usual business hours, including weekends.
14. This Agreement in no way purports or authorizes take of a state or federally listed species.

This approval, as required by ORS 509.585, only provides fish passage approval under the authority administered by ODFW. It is the responsibility of the Applicants to comply with all necessary and required local, county, state, and federal approvals and permits. Please pass this fish passage authorization along to appropriate project stakeholders as necessary.

Please contact me at 503-947-6228 or by email at greg.d.apke@state.or.us if you have questions with this fish passage authorization or any of its provisions.

Sincerely,

A handwritten signature in blue ink that reads "Gregory D. Apke". The signature is written in a cursive style.

Greg Apke
ODFW Statewide Fish Passage Program Coordinator

Cc: Peter Stevens, ODFW North West Watershed Coast Range District Fish Biologist
Jeff Boechler, ODFW North West Watershed Manager
Alan Ritchey, ODFW Fish Screens and Passage Program Manager
Kregg Smith, ODFW Assistant Fish Passage Program Coordinator
Sage Jensen, Jacobs Engineering
Tim Bedford, Jacobs Engineering
Steve Clayton, Jacobs Engineering
Project Files #PA-02-0297