

**DRAFT
FISH PASSAGE WAIVER AGREEMENT (W-17-0005)**

This Agreement is entered into on the date of last signature by and between the Oregon Department of Fish and Wildlife, hereinafter referred to as "the Department", and the Oregon Department of Transportation, hereinafter referred to as "the Applicant".

PREAMBLE

The Applicant desires a waiver from fish passage requirements from the Department for a 2009 highway road culvert repair pursuant to OAR 635-412-0020(4)(a) by the Applicant on Highway 101 MP 359.1 at Tuttle Creek, a direct tributary of the Chetco River, a direct tributary of the Pacific Ocean in Curry County, as detailed in Fish Passage Waiver Application # W-17-0005 (Attachment A).

PROVISIONS OF THE AGREEMENT

1. Pursuant to ORS 509.585 and OAR 635-412-0025(1), (9)(a), and (10)(b)(B), the Oregon Fish and Wildlife Commission waives fish passage requirements for the artificial obstruction at this location because it determines that the mitigation the Applicant has agreed to results in a net benefit (Attachment B) to native migratory fish relative to providing fish passage at the artificial obstruction at Tuttle Creek.
2. The locations of the artificial obstruction and mitigation sites shall only be those specified in Attachments A and B.
3. The Applicant shall provide fish passage mitigation by replacing an existing road culvert with a bridge at Joe Hall Creek, a tributary of the Chetco River, a direct tributary the Pacific Ocean (Attachment A).
4. Specific mitigation design plans shall meet Department fish passage criteria and guidelines and be approved by the Department prior to installation. The Applicant shall be responsible for obtaining all other necessary permission and permits as appropriate for the implementation of the mitigation.
5. The mitigation shall not be used to comply with any other legal requirements of the Applicant or others.
6. Mitigation shall be completed by the end of the 2009 ODFW in-water work period (July 15 – September 30).
7. The Applicant shall monitor the mitigation site and provide written status reports to the Department yearly for the first five (5) years and then as necessary, as determined by the Department. Reports shall include photo points established as part of the monitoring. Monitoring of the mitigation site shall be conducted annually and after flood events and, unless problems are observed that may require additional analysis, will consist of visual observations, particularly with regards to channel bed scour, fish passage function of the simulated stream bed within the project and adjacent to the new bridge, and general properly functioning native migratory fish passage conditions of the bridge and associated stream channel.
8. For the duration of this Agreement, the Applicant shall be responsible for all maintenance required such that the bridge mitigation provides adequate passage for native migratory fish. If monitoring by the Applicant or Department indicates that fish passage is not being provided, the Applicant, in consultation with the Department, shall determine the cause and, during an in-water work period approved by the Department, shall modify the mitigation to rectify problems as necessary.
9. Failure to maintain mitigation for the duration of this Agreement shall constitute a violation of this Agreement and applicable fish passage laws (OAR 635-412-0025(3)). Such failure shall invalidate this fish passage waiver for the artificial obstruction at Tuttle Creek and require the Applicant to provide fish passage at the artificial obstruction.
10. The Department shall be allowed to inspect the mitigation at reasonable times for the duration of this Agreement. Unless prompted by emergency or other exigent circumstances, inspection shall be limited to regular and usual business hours, including weekends.
11. The Applicant may employ other parties to perform work under this Agreement but remains responsible for the mitigation.
12. This Agreement remains in effect until such time as the artificial obstruction triggers fish passage laws again (OAR 635-412-0025(3)).

Signature:	_____	_____	_____	_____
	Oregon Department of Transportation	Date	Oregon Department of Fish and Wildlife	Date
Name:	<u>Mark Thompson</u>		<u>Greg Apke</u>	
Title:	<u>ODOT Region 3 Tech Center Manager</u>		<u>Statewide Fish Passage Program Leader</u>	