

# ODOT CULVERT REPAIR FISH PASSAGE PILOT PROGRAMMATIC AGREEMENT

The parties to this Programmatic Agreement, (hereafter "Agreement") are the Oregon Department of Fish and Wildlife (ODFW), and the Oregon Department of Transportation (ODOT), both agencies of the State of Oregon.

## I. PURPOSE

1. It is the policy of the State of Oregon to provide for upstream and downstream passage for native migratory fish in all waters of this state in which they are currently or have historically been present, as described in Oregon Revised Statute (ORS) 509.585, Oregon Administrative Rule (OAR) 635-412-0020, and envisioned by the Oregon Plan for Salmon and Watersheds (Executive Order 99-01).
2. It is the Mission of ODOT to provide a safe, efficient transportation system that supports economic opportunity and livable communities for Oregonians.
3. Pursuant to ORS 509.585 and OAR 635-412-0020, certain actions, or "trigger events,"<sup>1</sup> at "artificial obstructions"<sup>2</sup> where native migratory fish (as defined in OAR 635-412-0005(32)) are currently or were historically present require the review and approval of fish passage by ODFW or the Oregon Fish and Wildlife Commission (OFWC) prior to those trigger events occurring. OAR 635-412-0020(3)(b) allows ODFW to grant "programmatic approval" of a fish passage plan for multiple artificial obstructions of the same type.
4. ODOT owns and operates a number of culverts as part of its transportation system. ODOT desires the opportunity to conduct repair activities on their culverts to meet the original life expectancy of the culvert structure. These activities (Appendix A) may constitute a fish passage trigger event as defined by OAR 635-412-0005(9).
5. This Agreement is intended to serve as the ODFW fish passage approval for the repair of ODOT culverts associated with this pilot project that meet the requirements and conditions of this Agreement (including Appendix A).

## II. APPLICABILITY

1. This Agreement applies to ODOT, including its independent contractors, when repairing ODOT owned culverts. It does not apply to other State or local agencies, or private persons.
2. This Agreement applies when ODOT culvert repair actions covered by this pilot project constitute a "trigger event" to Oregon's Fish Passage Policy. The Agreement identifies and determines how ODOT shall proceed as per the terms of this Agreement. ODOT remains responsible to address and comply with fish passage laws for activities and situations not covered by this Agreement.
3. Under this Programmatic Agreement only ODFW may determine that native migratory fish are not currently and were not historically present at a site; however ODOT may assume presence of native migratory fish.

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<sup>1</sup> "Trigger events" for the purposes of this Agreement shall mean, with respect to an "artificial obstruction" (defined in OAR 635-412-0005(3)) located where native migratory fish are currently or were historically present: "construction" activities (defined in OAR 635-412-0005(9)), "fundamental changes in permit status" (defined in OAR 635-412-0005(25)), or "abandonment".

<sup>2</sup> "Artificial obstruction" means any dam, diversion, dike, berm, levee, tide or flood gate, road, culvert or other human-made device placed in the waters of this state that precludes or prevents the migration of native migratory fish.

4. This Agreement applies to culverts that meet all of the following criteria:
  - a) Culverts located west of the Cascade crest;
  - b) Culverts located outside of the ODFW North Coast Watershed District, and
  - c) Culverts not rated a "High" priority on the ODFW/ODOT culvert priority list.
  - d) Culverts located in or which would prevent access to Habitat Category 1 habitat are excluded.
  - e) Culverts with tide gates are excluded.

### **III. PROVISIONS OF THE AGREEMENT**

- A. ODOT will be permitted to conduct the culvert repair activities described in appendix A through the 3-year term of this Agreement.
- B. ODOT will ensure that fish passage improvements occur at each culvert repaired under this Agreement such that passage conditions are improved after the repair action over what existed prior to the culvert repair activity.
- C. ODOT will provide \$1,800,000 to an ODFW fish passage account to offset the delay in full fish passage as a result of this Agreement. This fund will be managed and used by ODFW to address high priority fish passage projects statewide regardless of ODOT ownership and independent of geographic location.
- D. ODOT will continue to fund at least \$4.2 million annually into the ODOT Fish Passage Program. This fund may be used as the source of the \$1,800,000 contribution to the ODFW fish passage fund. The remaining ODOT fish passage dollars will be used to address fish passage projects administered by ODOT or in support of a Liaison position at ODFW.
- E. By February 28 of each year of the Agreement, ODOT will provide ODFW a list of culverts anticipated to be repaired each corresponding year under the terms of this Agreement. ODFW will review and approve the list based on criteria in Section II.4.a-e above, by March 31 of each year, or within 30 days of submitting the list.
- F. ODOT will fund an ODFW/ODOT Liaison position to help implement this Agreement.
- G. Culvert repair actions not authorized by this Agreement require specific approval by ODFW if the repair actions meet the trigger definition. This Agreement does not preclude ODOT from pursuing other options to address or comply with fish passage laws at ODOT structures.
- H. ODOT is responsible for obtaining all other state and federal permits and permissions necessary for completion of activities approved by the Agreement.
- I. All in-water work associated with this Agreement will occur during the appropriate ODFW in-water work window, or as negotiated.
- J. This Agreement in no way purports or authorizes take of a federally listed species.
- K. Pursuant to OAR 635-412-0035 (1 and 10) ODOT is responsible for following all best management practices during construction/maintenance activities to protect fish, wildlife, and their habitats. These BMP's, as listed in rule, include but are not limited to, adequately dewatering and isolating worksites, performing fish salvages, and providing adequate downstream passage, bypass, and screening if necessary.

#### **IV. POST-PROJECT OBLIGATIONS**

1. **Maintenance.** ODOT is responsible for all maintenance required such that culverts repaired under this Agreement continue to provide the improved level of fish passage that was achieved under this Agreement.
2. **Inspection and Record-Keeping.** ODFW may inspect any road-stream crossing for which ODOT is responsible (ORS 509.625 and OAR 635-412-0020(3)(b)(D)). If inspection of a site installed under this Programmatic indicates that fish passage improvements are not functioning as intended, ODFW shall notify ODOT. ODOT shall work with ODFW to determine the cause and, during a work period approved by ODFW, expeditiously rectify problems as necessary (OAR 635-412-0020(3)(b)(E)).
3. **Monitoring and Reporting.** ODOT, or its designee, shall monitor and report all repair projects implemented under this agreement to verify that fish passage improvement(s) function as intended. Monitoring shall be completed annually after winter and spring channel forming high flow events for a period of 3-years after completion of each culvert repair and fish passage improvement. Monitoring shall consist of a best professional judgment assessment by a qualified biologist of fish passage conditions. This may include notation of any water surface jumps, channel adjustments, streamflow velocity characteristics, channel bed stability, scour occurrence, and other relevant data to ensure the project is functioning as designed for fish passage. Pre- and post-treatment photographs of each site shall be included in the monitoring reports. If monitoring indicates that fish passage is not being provided consistent with project intent, ODOT shall consult with ODFW, determine the cause, and during a work period approved by ODFW, expeditiously rectify problems as necessary (OAR 635-412-0020(3)(b)(E)). If in the final year, post-project assessment reveals a successful project and that fish passage has not deteriorated, then the project will be removed from the post-project monitoring obligations.
4. **Annual Report.** By Dec 31<sup>st</sup> of each year of the Agreement, ODOT shall provide an Annual Electronic Report on all culverts repaired under this Agreement. The Annual Electronic Report shall consist of:
  - A. Narrative discussion of program activities,
  - B. Map of culverts repaired under program,
  - C. Description and date of repair action(s) performed at each culvert under the Agreement,
  - D. Description of how fish passage was improved at each culvert repaired under the Agreement,
  - E. Project specific monitoring results from monitoring efforts identified in # 3 above,
  - F. Estimate of fish habitat upstream of each culvert, and
  - G. List of species present at each culvert.
5. **Coordination Meetings.** Staff from ODOT and ODFW affected by this Agreement, will meet annually, or as otherwise deemed appropriate, to collaboratively review projects implemented under this Agreement and evaluate adaptive management measures, as appropriate.

#### **V. GENERAL PROVISIONS**

1. **Notice.** The parties' contact persons for all notices provided for under this Agreement, except as specifically provided otherwise, are as follows:

Agency	ODFW	ODFW Technical	ODOT	ODOT Technical
Name	Greg Apke	TBD	Bill Warncke	Rob Trevis
Title	Fish Passage Coordinator	ODFW/ODOT Liaison	ODOT Fish Passage Program Team Leader	ODOT Culvert Design Engineer
Address	4034 Fairview Industrial Dr SE Salem, OR 97302	4034 Fairview Industrial Dr SE Salem, OR 97302	4040 Fairview Industrial Dr SE Salem, OR 97302	4040 Fairview Industrial Dr SE MS #6 Salem, OR 97302-1142
Phone	503-947-6228	TBD	503-986-3459	(503) 986-3860
E-Mail	greg.d.apke@state.or.us	TBD	William.M.Warncke@odot.state.or.us	Robert.E.TREVIS@odot.state.or.us

*Either party may change a designated contact person at any time by providing written notice to the other party.*

2. Amendments. Amendments to this Agreement may be made within applicable laws at the mutual agreement and signature of the ODFW Fish Screens and Passage Program Manager and the ODOT Environmental Resources Unit Manager.
3. Term. This Agreement is entered into on the date of last signature by and between ODFW and ODOT, both representing the State of Oregon. This Agreement expires Dec 31, 2017.
4. Termination. This Agreement may be terminated at any time through mutual agreement by the parties or by either party after a 30-day written notice. If terminated, culverts previously maintained consistent with this Programmatic will not be subject to additional fish passage requirements beyond maintenance as described in IV(1), until an additional trigger event may occur.

\_\_\_\_\_  
 XXXXX Date  
 Oregon Department of Transportation

\_\_\_\_\_  
 XXXXXXXXXXXXXXXXXXXX Date  
 Chair, Oregon Fish and Wildlife Commission

# Appendix A

## **ODOT culvert repair actions\* allowed under the Programmatic Agreement that currently trigger fish passage laws**

Strip line  
Spot and localized repairs  
Spray on coating  
Cured in place technology  
Spiral wound  
Pave invert  
Add or extend end treatments  
Replace interior sections of culvert\*\*  
Replace road pavement and sub base above culverts

\*The intent of the culvert repairs allowed under the programmatic agreement is to provide (up to) an additional 10 to 25 years of culvert life. The actual life of the culvert and repair will depend on site specific conditions. These repairs are considered short term fixes, not in effect a culvert replacement that provides a new design life.

\*\* This technique is intended to replace 1 to 3 segments of a concrete section pipe that have broken or failed prematurely. It is not intended to replace the majority of the pipe.

New culvert repair technology that meets the intent of this agreement may be added to this list upon review and approval by the ODFW and ODOT contacts identified in section V.