



Oregon

Kate Brown, Governor

Department of Environmental Quality
Northwest Region Portland Office/Water Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5263
FAX (503) 229-6957
TTY 711

July 23, 2018

Myles Breadner
MBBH Development, LLC
123 NW 7th Street
Corvallis, OR 97330

RE: 2015-00502/1; Sommerset Subdivision and Extension 401 Water Quality Certification

The Department of Environmental Quality (DEQ) has reviewed the U.S. Army Corps of Engineers (USACE) Permit application #2015-00502/1 (Department of State Lands [DSL] #58597-RF & 59822-RF), pursuant to a request for a Clean Water Act Section 401 Water Quality Certification (WQC) received on January 18, 2018. DEQ's 401 WQC public comment opportunity was circulated with the USACE public notice. DEQ received public comments; however, these were not related to water quality.

According to the application, Myles Breadner, (the "Applicant") proposes to impact wetlands adjacent to Truax Creek in order to construct both the Sommerset Subdivision and the Sommerset Extension. The project is located in wetlands adjacent to Truax Creek, Albany, Linn County, Oregon (Section 3, Township 10 South, Range 3 West).

Project Description: The Applicant proposes to permanently impact 8.72 acres of wetlands by discharging 14,605 Cubic Yards (CY) of fill material in order to construct a 144 lot subdivision with corresponding streets, utilities, and facilities. Impacts to wetlands will be mitigated by the purchase of palustrine emergent wetland credits from the One Horse Slough Mitigation Bank.

Status of Affected Waters of the State: The Truax Creek, a tributary to the Willamette River is classified as water quality limited under the Federal Clean Water Act and is listed on the Section 303(d) List of impaired water bodies for potential concern of iron and manganese. The Willamette River is classified as water quality limited under the Federal Clean Water Act and is listed on the Section 303(d) List of impaired water bodies for the parameters of biological criteria, iron, and manganese; and has an Environmental Protection Agency Total Maximum Daily Load (TMDL) developed for the parameters of temperature, dioxin, and *E.coli*.

The above listed parameters impair the following beneficial uses in the Truax Creek: public domestic water supply, private domestic water supply, industrial water supply, irrigation, livestock watering, and fish and aquatic life. Additional beneficial uses include: wildlife and hunting, fishing, boating, water contact recreation and aesthetic quality.

Certification Decision: Based on the information provided by the Applicant and the USACE, DEQ is reasonably assured that implementation of the project will be consistent with applicable provisions of Sections 301, 302, 303, 306, and 307 of the federal Clean Water Act, state water quality standards set forth in Oregon Administrative Rules Chapter 340 Division 41, and other appropriate requirements of state law, provided the following conditions are strictly adhered to by the Applicant.

401 WQC GENERAL CONDITIONS

- 1) **Responsible parties:** This 401 WQC applies to the Applicant. The Applicant is responsible for the work of its contractors and sub-contractors, as well as any other entity that performs work related to this WQC.
- 2) **Work Authorized:** Work authorized by this 401 WQC is limited to the work described in the Joint Permit Application signed on December 20, 2017 and additional application materials (hereafter "the permit application materials"), unless otherwise authorized by DEQ. If the project is operated in a manner not consistent with the project description contained in the permit application materials, the Applicant is not in compliance with this 401 WQC and may be subject to enforcement.
- 3) **Duration of Certificate:** This 401 WQC for impacts to waters, including dredge and fill activities, is valid for five years from the date of issuance of the USACE 404 permit. A new or modified 401 WQC must be requested prior to any modification of the USACE 404 permit. Post construction stormwater facilities must be maintained for the life of the facility.
- 4) A copy of this 401 WQC letter must be kept on the job site and readily available for reference by Applicant and its contractors, as well as by DEQ, USACE, National Marine Fisheries Service (NMFS), Oregon Department of Fish and Wildlife (ODFW), and other appropriate state and local government inspectors.
- 5) **Modification:** Any approved modifications to this 401 WQC will incur a Tier 1 fee of \$985 at a minimum. Complex modifications may be charged a higher fee.
- 6) The Applicant must notify DEQ of any change in ownership or control of this project and obtain DEQ review and approval before undertaking any change to the project that might affect water quality.
- 7) DEQ may modify or revoke this 401 WQC, in accordance with OAR 340-048-0050, if the project changes or project activities are having an adverse impact on state water quality

or beneficial uses, or if the Applicant is otherwise in violation of the conditions of this certification.

- 8) The Applicant and its contractors must allow DEQ access to the project site, staging areas, and mitigation sites to monitor compliance with these 401 WQC conditions, including:
 - a. Access to any records, logs, and reports that must be kept under the conditions of this 401 WQC;
 - b. To inspect best management practices (BMPs), monitoring or operational equipment or methods;
 - c. To collect samples or monitor any discharge of pollutants.
- 9) Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

CONSTRUCTION SPECIFIC CONDITIONS

- 10) **Erosion Control:** During construction, erosion control measures must be implemented to prevent or control movement of soil into waters of the state. The Applicant is required to develop and implement an effective erosion and sediment control plan. **Any project that disturbs more than one acre is required to obtain an NPDES 1200-C construction stormwater general permit from DEQ.** In addition, the Applicant must do the following, unless otherwise authorized by DEQ in writing:
 - a. Maintain an adequate supply of materials necessary to control erosion at the project construction site;
 - b. Deploy compost berms, impervious materials, or other effective methods during rain events or when stockpiles are not moved or reshaped for more than 48 hours. Erosion of stockpiles is prohibited;
 - c. Inspect erosion control measures daily and maintain erosion control measures as often as necessary to ensure the continued effectiveness of measures. Erosion control measures must remain in place until all exposed soil is stabilized;
 - i. If monitoring or inspection shows that the erosion and sediment controls are ineffective, the Applicant must mobilize immediately to make repairs, install replacements, or install additional controls as necessary.
 - ii. If sediment has reached 1/3 of the exposed height of a sediment or erosion control, the Applicant must remove the sediment to its original contour.
 - d. Use removable pads or mats to prevent soil compaction at all construction access points through, and staging areas in, riparian or wetland areas to prevent soil compaction, unless otherwise authorized by DEQ.
 - e. Flag or fence off wetlands not specifically authorized to be impacted to protect from disturbance and/or erosion.

- f. Place dredged or other excavated material on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands;
- g. Place clean aggregate at all construction entrances, and utilize other BMPs, including, but not limited to as truck or wheel washes, when earth moving equipment is leaving the site and traveling on paved surfaces. The tracking of sediment off site by vehicles is prohibited.
- h. This certification *does not* authorize the placement of BMPs into waters of the state unless specifically outlined in the application and authorized by DEQ.

11) **Deleterious waste materials:** The Applicant is prohibited from placing biologically harmful materials and construction debris including, but not limited to: petroleum products, chemicals, cement cured less than 24 hours, welding slag and grindings, concrete saw cutting by-products, sandblasted materials, chipped paint, tires, wire, steel posts, asphalt and waste concrete where such materials could enter waters of the state, including wetlands (wetlands are waters of the state). The Applicant must:

- a. Cure concrete, cement, or grout for at least 24 hours prior to any contact with flowing waters;
- b. Use only clean fill, free of waste and polluted substances;
- c. Employ all practicable controls to prevent discharges of spills of deleterious materials to surface or ground water;
- d. Maintain at the project construction site, and deploy as necessary, an adequate supply of materials needed to contain deleterious materials during a weather event;
- e. Remove all foreign materials, refuse, and waste from the project area; and
- f. Employ general good housekeeping practices at all times.

12) **Spill Prevention:** The Applicant must fuel, operate, maintain and store vehicles and equipment, and must store construction materials, in areas that will not disturb habitat either directly or result in potential discharges. In addition, the following specific requirements apply:

- a. Vehicle staging, cleaning, maintenance, refueling, and fuel storage must take place in a vehicle staging area placed 150 feet or more from any waters of the state. An exception to this distance may be authorized upon written approval by DEQ if all practicable prevention measures are employed and this distance is not possible because of any of the following site conditions:
 - i. Physical constraints that make this distance not feasible (e.g., steep slopes, rock outcroppings);
 - ii. Natural resource features would be degraded as a result of this setback; or
 - iii. Equal or greater spill containment and effect avoidance is provided even if staging area is less than 150 feet of any waters of the state.

- b. If staging areas are within 150 feet of any waters of the state, as allowed under subsection (a)(iii) of this condition, full containment of potential contaminants must be provided to prevent soil and water contamination, as appropriate;
- c. All vehicles operated within 150 feet of any waters of the state must be inspected daily for fluid leaks before leaving the vehicle staging area. Any leaks detected in the vehicle staging area must be repaired before the vehicle resumes operation;
- d. Before operations begin and as often as necessary during operation, equipment must be steam cleaned (or undergo an approved equivalent cleaning) until all visible external oil, grease, mud, and other visible contaminants are removed if the equipment will be used below the bank of a waterbody;
- e. All stationary power equipment (e.g., generators, cranes, stationary drilling equipment) operated within 150 feet of any waters of the state must be covered by an absorbent mat to prevent leaks, unless other suitable containment is provided to prevent potential spills from entering any waters of the state;
- f. An adequate supply of materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials) needed to contain spills must be maintained at the project construction site and deployed as necessary;
- g. All equipment operated in state waters must use bio-degradable hydraulic fluid; and
- h. A maintenance log documenting equipment maintenance inspections and actions must be kept on-site and available upon request.

13) **Spill & Incident Reporting:**

- a. In the event that petroleum products, chemicals, or any other deleterious materials are discharged into state waters, or onto land with a potential to enter state waters, the Applicant must promptly report the discharge to the Oregon Emergency Response System (OERS, 1-800-452-0311). The Applicant must immediately begin containment and complete cleanup as soon as possible
- b. If the project operations cause a water quality problem which results in distressed or dying fish, the Applicant must immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; collect fish specimens and water samples; and notify DEQ, ODFW and other appropriate regulatory agencies.

14) **Vegetation Protection and Restoration:**

- a. The Applicant must protect riparian, wetland, and shoreline vegetation in the authorized project area (as defined in the permit application materials) from disturbance through one or more of the following:
 - i. Minimization of project and impact footprint;
 - ii. Designation of staging areas and access points in open, upland areas;
 - iii. Fencing and other barriers demarcating construction areas; and
 - iv. Use of alternative equipment (e.g., spider hoe or crane).

- b. If authorized work results in vegetative disturbance and the disturbance has not been accounted for in planned mitigation actions, the Applicant must successfully reestablish vegetation to a degree of function equivalent or better than before the disturbance. The standard for success is 80% cover for native plant species. The vegetation must be reestablished by the completion of authorized work and include:
- i. Restoring damaged streambanks to a natural slope, pattern, and profile suitable for establishment of permanent woody vegetation, unless precluded by pre-project conditions (e.g., a natural rock wall);
 - ii. Replanting or reseeding each area requiring revegetation before the end of the first planting season following construction;
 - iii. Planting disturbed areas with native plants and trees in all cases except where the use of non-native plant materials may be essential for erosion control;
 - iv. The use of invasive species to re-establish vegetation is prohibited;
 - v. Herbicides, pesticides and fertilizers must be applied per manufacturer's instructions, and only if necessary for vegetation establishment. If chemical treatment is necessary, the Applicant is responsible for ensuring that pesticide application laws, including with the 2300-A pesticide NPDES general permit are met. Please review the information on the following website for more information:
www.deq.state.or.us/wq/wqpermit/pesticides.htm.

Additionally:

1. Unless otherwise approved in writing by DEQ, applying surface fertilizer within stormwater treatment facilities or within 50 feet of any stream channel is prohibited
 2. Other than spot application to cut stems, no herbicides are allowed within stormwater treatment facilities or within 150 feet of waters of the state. Mechanical, hand, or other methods may be used to control weeds and unwanted vegetation within stormwater treatment facilities or within 150 feet of waters of the state; and
 3. No pesticides may be used within stormwater treatment facilities or within 150 feet of waters of the state.
- vi. Install wildlife-friendly fencing as necessary to prevent access to revegetated sites by livestock or unauthorized persons.
 - vii. Minimize soil compaction, especially in areas that are designated to be replanted. If soils are compacted, decompact staging areas and work construction areas prior to replanting. Leave topsoil when possible. Chip materials from clear and grub operation and spread on soil surface, unless cleared areas contained invasive species.
- 15) Provide a minimum 50-foot buffer zone to protect existing riparian areas and wetlands, unless otherwise authorized in writing by DEQ.

- 16) **Notification to DEQ:** The Applicant must provide pre-construction notification to DEQ one week prior to the start of construction. Contact information can be found at the end of the certification.

SPECIFIC CONDITIONS FOR POST CONSTRUCTION STORMWATER MANAGEMENT

- 17) **Post Construction Stormwater Management:** The Applicant must implement and comply with the terms of the approved post-construction stormwater management plan, which describes BMPs to prevent or treat pollution in stormwater anticipated to be generated by the project, in order to comply with state water quality standards. The Applicant must implement BMPs as proposed in the stormwater management plan, including operation and maintenance, dated October 11, 2017 and amended on April 13, 2018 for the Sommerset Extension portion of this proposal. Please see 401 WQ Certification for 2015-00502 for specific information regarding stormwater for the first phase of development. If proposed stormwater facilities change due to site conditions, the Applicant must notify DEQ, and receive approval in writing.

-A series of vegetated bioswales with 3:1 slopes will treat stormwater prior to discharge to Truax Creek.

-The ammended element to the stormwater plan includes a series of raingardens to treat roof runnoff will supply the adjacent wetland with treated stormwater.

Within 30 days of project completion, the Applicant must submit a copy of the "As-Builts" or red-lined construction drawings showing all stormwater management facilities.

- 18) **Stormwater Management & System Maintenance:** The Applicant is required to implement effective operation and maintenance practices for the lifetime of the proposed facility. These include but are not limited to:
- a. Maintenance techniques and frequency for each system component must follow appropriate recommendations in accepted manuals.
 - b. Long-term operation and maintenance of stormwater treatment facilities will be the responsibility of the Myles Breadner, unless and until an agreement transferring that responsibility to another entity is submitted to DEQ.
- 19) **Corrective Action May Be Required:** The Department retains the authority to require corrective action in the event the stormwater management facilities are not built or performing as described in the plan.

If the Applicant is dissatisfied with the conditions contained in this certification, a contested case hearing may be requested in accordance with OAR 340-048-0045. Such request must

be made in writing to the DEQ Office of Compliance and Enforcement at Lloyd 700 Building, 700 NE Multnomah St #600, Portland, OR 97232 within 20 days of the mailing of this certification.

The DEQ hereby certifies this project, with the above conditions, in accordance with the Clean Water Act and state rules, If you have any questions, please contact Alexandra Holeček at holecek.alex@deq.state.or.us at 541-686-7763, or at 165 East 7th Avenue, Eugene, OR 97404.

Sincerely,



Steve Mrazik
Water Quality Manager
Northwest Region

2015-00502/1 Sommerset Subdivision and Extension 401 WQC.docm

cc: Andrea Wagner, USACE
Mike DeBlasi, DSL
Marc Liverman, NOAA Fisheries
Eric Henning, Zion Natural Resources Consulting