



Oregon

Kate Brown, Governor

APPENDIX C

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RE: 2019-00141; Lochner Road Improvement Project 401 Water Quality Certification

The Oregon Department of Environmental Quality has reviewed the U.S. Army Corps of Engineers permit application #(NWP-2019-00141) (DSL permit number: 61832-RF) the Lochner Road Improvement Project, in response to a request for a Clean Water Act Section 401 Water Quality Certification received on June 11, 2019. DEQ's 401 Water Quality Certification public comment information was circulated with the Corps' public notice, and DEQ received no comments.

The applicant, Amy Schumacher, proposes to impact approximately 1.31 acres of wetlands by excavating about 4,071 cubic yards (CY) and discharging approximately 2,380 CY of fill material adjacent to drainage systems that discharge to the Oak Creek in order to widen Lochner Road, add a sidewalk, curb, bike lanes, and associated stormwater facilities. The project site is located on wetlands adjacent to the Oak Creek, Albany, Linn County, Oregon City, County, Oregon (Sections 19 and 20, Township 11 South, Range 3 West)

Project Description: The project will occur on the intersection of Lochner Road and Marion Street as well as both sides of Lochner Road (right of way only) from Marion Street south 0.5 miles. It will consist of a re-aligned intersection with Marion Street, a new stormwater detention pond, the widening of Lochner Road, a sidewalk, curb, gutter, landscape zone, new stormwater quality planters, and bike lanes. To mitigate for the permanent impact of 1.31 acres of wetlands the applicant proposes to purchase 1.31 acre credits from the Long Tom Wetland Mitigation Bank in addition to avoiding 2.14 acres of wetlands on site.

Status of Affected Waters of the State: The Oak Creek 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 and has an Environmental Protection Agency Total Maximum Daily Load (TMDL) developed for the parameters of temperature and E.coli. The Calapooia 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 dissolved oxygen, iron and manganese; and has an Environmental Protection Agency Total Maximum Daily Load (TMDL) developed for the parameters of temperature and E.coli.

The above listed parameters impair the following beneficial uses in the Calapooia River: Public Domestic Water Supply, Private Domestic Water Supply, Industrial Water Supply, Irrigation,

Livestock Watering, Fish and Aquatic Life, and Wildlife and Hunting. Additional beneficial uses include: Fishing, Boating, Water Contact Recreation, and Aesthetic Quality.

Certification Decision: Based on the information provided by the applicant and the Corps, DEQ is reasonably assured 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 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 subcontractors, as well as any other entity that performs work related to this Water Quality Certification.
- 2) **Work Authorized:** Work authorized by this 401 Water Quality Certification is limited to the work described in the Joint Permit Application signed on February 28, 2019 and additional application materials, unless otherwise authorized by DEQ. If the project is operated in a manner that's not consistent with the project description in the permit application materials, the applicant is not in compliance with this 401 Water Quality Certification and may face enforcement penalties.
- 3) **Duration of Certificate:** This 401 Water Quality Certification for impacts to waters, including dredge and fill activities, is valid until closure of the in-water timing window (see Condition 2) of the fifth year from the date of issuance of the USACE 404 permit. A new or modified 401 certification must be requested before any modification of the US Army Corps of Engineers 404 permit.
- 4) **401 WQC on Site:** A copy of this 401 Water Quality Certification letter must be kept on the job site and readily available for reference by the applicant and its contractors and subcontractors, as well as by DEQ, US Army Corps of Engineers, National Marine Fisheries Service, Oregon Department of Fish and Wildlife and other state and local government inspectors.
- 5) **Modification:** Any approved modifications to this certification will incur a Tier 1 fee of \$985 at a minimum. A higher fee will be assessed for complex modifications.
- 6) **Notification:** The applicant must notify DEQ of any change in ownership or control of this project within 30 days, and obtain DEQ review and approval before undertaking any change to the project that might affect water quality.
- 7) **Project Changes:** DEQ may modify or revoke this certification, in accordance with Oregon Administrative Rules 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 violates any of the conditions of this certification.

- 8) **Access:** The applicant and its contractors must allow DEQ access to the project site with or without prior notice, including staging areas, and mitigation sites to monitor compliance with these certification conditions, including:
- a. Access to any records, logs, and reports that must be kept under the conditions of this certification
 - b. To inspect best management practices, monitoring or 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 soil from reaching waters of the state. The applicant is required to develop and implement an effective erosion and sediment control plan. Refer to DEQ's Oregon Sediment and Erosion Control Manual, January, 2013 at:
<https://www.oregon.gov/deq/FilterPermitsDocs/ErosionSedimentControl.pdf>
Any project that disturbs more than one acre is required to obtain a National Pollutant Discharge Elimination System 1200-C construction stormwater general permit from DEQ. Contact DEQ for more information (Contact information can be found at: <https://www.oregon.gov/deq/wq/wqpermits/Pages/Stormwater-Construction.aspx>)

In addition, the applicant, unless otherwise authorized by DEQ in writing must:

- a. Maintain an adequate supply of materials necessary to control erosion at the construction site
- b. Erosion of stockpiles is prohibited. Deploy compost berms, impervious materials, or other effective methods during rain or when stockpiles are not moved or reshaped for more than 48 hours.
- 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 act immediately to make repairs, install replacements, or install additional controls as necessary.
 - ii. If sediment has reached a third 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 best management practices, including, but not limited to truck or wheel washes, when

earth-moving equipment is leaving the site and traveling on paved surfaces. Vehicles are prohibited from tracking sediment off site.

- h. This certification *does not* authorize the placement of best management practices into waters of the state unless specifically outlined in the application and authorized by DEQ.
- i. Upon completion of construction activities, stormwater facilities must be inspected and adequately prepared for post-construction stormwater treatment.
- j. Upon completion of construction activities, stormwater facilities must be tested to ensure they are working and adequately prepared for post-construction stormwater treatment.

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 before 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 harmful materials to surface or groundwater
- 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
- f. Employ general good housekeeping practices at all times

12) **Spill Prevention:** The applicant must have a spill prevention and control plan. The applicant must fuel, operate, maintain and store vehicles and equipment, and must store construction materials; in areas that will not disturb native habitat directly or result in potential discharges. In general, reasonable precautions and controls must be used to prevent any discharges of petroleum products or other harmful or toxic materials from entering the water as a result of any in-water activities. In addition, the following specific requirements apply:

- a. Vehicle and motorized equipment staging, cleaning, maintenance, refueling, and fuel storage must take place in a vehicle staging area 150 feet or more from any waters of the state. DEQ may approve in writing exceptions to this distance if all practical 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
- iii. Equal or greater spill containment and effect avoidance is provided even if staging area is less than 150 feet away from 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 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
- 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 harmful 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 (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
 - Note condition of fish (dead, dying, decaying, erratic, or unusual behavior)
 - Note the number, species, and size of fish in each condition
 - Note the location of fish relative to operations
 - Note the presence of any apparently healthy fish in the area at the same time
 - Collect fish specimens and water samples
 - Notify DEQ, Oregon Department of Fish and Wildlife, National Marine Fisheries Service and U.S. Fish and Wildlife Service as appropriate (reporting of listed fish mortality to National Marine Fisheries Service is required).

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
 - 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 percent 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 National Pollutant Discharge Eliminations System 2300-A general permit are met. Please review the information on the following website for more information:
<https://www.oregon.gov/deq/wq/wqpermits/Pages/Pesticide.aspx>

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 for replanting. 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 and maintain existing minimum **50-foot buffer zone during construction and post-construction to protect riparian areas and wetlands**, unless authorized in writing by DEQ.
- 16) **Previously Contaminated Soil and Groundwater:** If any contaminated soil or groundwater is encountered, it must be handled and disposed of in accordance with the soil and groundwater management plan for the site, as well as local, state and federal regulations. The applicant must notify the Environmental Cleanup Section of DEQ at 800-452-4011 Ex.6258.
- 17) **Notification to DEQ:** The applicant must provide pre-construction notification to DEQ one week before construction starts. Contact information can be found at the end of the certification.

SPECIFIC CONDITIONS FOR POST CONSTRUCTION STORMWATER MANAGEMENT

- 18) **Post Construction Stormwater Management:** The applicant must implement and comply with the terms of the approved post-construction stormwater management plan, which describes best management practices 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 best management practices as proposed in the stormwater management plan, including operation and maintenance, dated February 11, 2019. If proposed stormwater facilities change due to site conditions, the applicant must receive approval in writing from DEQ to make changes.

A series of 15' wide 2:1 sloped, ammended and vegetated stormwater planters convey stormwater to a water quality detention basin, containing 18" of ammended soils and drain rock. Treated stormwater is then discharged via exisiting underground stormdrain system.

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

- 19) **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 Kristin Preston, Utility Superintendent – Wastewater City of Albany, unless and until an agreement transferring that responsibility to another entity is submitted to DEQ.
- 20) **Corrective Action May Be Required:** DEQ 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 not satisfied with the conditions contained in this certification, a contested case hearing may be requested in accordance with Oregon Administrative Rule 340-048-0045. Such requests must be made in writing to the DEQ Office of Compliance and Enforcement at 700 NE Multnomah St, Suite 600, Portland Oregon 97232 within 20 days of the mailing of this certification.

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 Holecek at alex.holecek@state.or.us, by phone at (541) 686-7763, or at 165 E. 7th Ave, Suite 100 Eugene, OR 97404.

Sincerely,



Steve Mrazik
Water Quality Manager
Northwest Region

ec: Andrea Wagner, USACE
Carrie Landrum, DSL
Mark Liverman, NOAA Fisheries
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