

# Public Notice

## DEQ Requests Comments on Proposed Water Quality Certification for East Barton Subdivision



State of Oregon  
Department of  
Environmental  
Quality

The Oregon Department of Environmental Quality invites the public to submit written comments on a proposed Section 401 water quality certification for the East Barton Subdivision project in Eagle Point, Jackson County.

### Summary

Snyder Creek Development, LLC proposes to construct a 22-lot residential subdivision at 303 Barton Road, Eagle Point, OR

### Where can I get more information?

The proposed agreement is provided below. You can review the file in its entirety at the DEQ Northwest Region office located at 700 NE Multnomah Street Suite 600 in Portland. For a review appointment, contact Anne Kim, Permit Coordinator, at 503-229-5623 or email [anne.kim@deq.state.or.us](mailto:anne.kim@deq.state.or.us).

### How do I participate?

You may submit your comments by mail or email to:

401 Public Comments  
Northwest Region DEQ  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232

**Email:** [401publiccomments@deq.state.or.us](mailto:401publiccomments@deq.state.or.us)

**All comments are due by 5 p.m., Friday, Oct. 8, 2021.** All comments will become part of the public record.

### About the project

Snyder Creek Development, LLC proposes to impact wetland and a drainage ditch, by removing approximately 354 cubic yards of native soil, and discharging approximately 1,652 cubic yards of fill material in order to construct a 22 subdivision and a connector road. The applicant proposes to mitigate by purchasing 0.45 wetland credits at the Rouge Valley Vernal Pool Mitigation Bank.

### What does a water quality certification do?

One way DEQ protects Oregon's water quality is by issuing Section 401 certifications. Section 401 of the federal Clean Water Act requires federal agencies to obtain a water quality certification from the State if the proposed activity may result in a discharge to surface waters. The certification states that the discharge will

comply with applicable sections of the Clean Water Act.

### What legal authorities apply?

- Federal Clean Water Act
- Oregon Revised Statutes 468B
- Oregon Administrative Rules Chapter 340, Divisions 041 and 048

### What happens next?

DEQ may hold a public hearing on the proposal if one is requested by 10 or more people or an organization representing 10 or more members. DEQ will review and consider all comments received. The certification may be issued as proposed, modified or denied.

You will be notified of DEQ's final decision if you submit written comments during the comment period. Otherwise, if you would like to receive notification, please contact Anne Kim at 503-229-5623 or [kim.anne@deq.state.or.us](mailto:kim.anne@deq.state.or.us).

### Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us).

**401 Water Quality Certification Program**  
700 NE Multnomah St.  
Suite 600  
Portland, OR 97232  
Phone: 503-229-5623  
800-452-4011  
Contact: Anne Kim

[www.oregon.gov/DEQ](http://www.oregon.gov/DEQ)

*DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.*



# 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

September 3, 2021

Travis Snyder  
Snyder Creek Development, LLC  
13540 Table Rock Road  
Central Point, OR 97502

## **RE: 2021-132; East Barton Subdivision 401 Water Quality Certification**

The Department of Environmental Quality (DEQ) has reviewed the U.S. Army Corps of Engineers (USACE) Permit application #2021-132 (Department of State Lands [DSL] #63322-RF), pursuant to a request for a Clean Water Act Section 401 Water Quality Certification (WQC) received on August 6, 2021. The 401 WQC public comment opportunity was circulated by DEQ, and **no** water quality comments were received.

According to the application, Snyder Creek Development, LLC ("the Applicant") proposes to impact 0.45 acres of wetland and 40 linear feet of a drainage ditch in order to construct 22 residential dwellings for a new subdivision. The project is located in wetlands north of Little Butte Creek, Eagle Point, Jackson County, Oregon (Section 34 /Township 35S /Range 1W).

**Project Description:** The Applicant proposes to permanently impact 0.45 acre by removing approximately 354 cubic yards of native soil and discharging approximately 1,652 cubic yards of fill material into wetlands and waters to construct a 22 lot subdivision along with corresponding roads and utilities. Stormwater runoff from the project will be managed and treated on the adjacent property to the west, North Barton Subdivision, which was issued a 401 water quality certification in 2018 (2017-292). Approximately 2.62 acres of impervious surface will be added to the South Coast Basin. The Applicant proposed to purchase 0.45 wetland credits at the Rouge Valley Vernal Pool Mitigation Bank to offset these impacts.

**Status of Affected Waters of the State:** The Little Butte 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 for dissolved oxygen, sedimentation, pH, aquatic weeds or algae, chlorophyll, habitat and flow modification and has an Environmental Protection Agency Total Maximum Daily Load (TMDL) developed for the parameters of *E. coli* and temperature.

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

**Certification Decision:** Based on the information provided by the Applicant and 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 incorporated into the USACE permit and 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.  
*Rule: 40 CFR 121, OAR 340-048-0015*  
*Justification: DEQ must be aware of responsible parties to ensure compliance.*
- 2) **Work Authorized:** Work authorized by this Order is limited to the work described in the Joint Permit Application signed on April 27, 2021 and additional application materials (hereafter “the permit application materials”), unless otherwise authorized by DEQ. If the project is operated in a manner that’s not consistent with the project description contained in the permit application materials, the Applicant is not in compliance with this Order and may be subject to enforcement.  
*Rule: OAR 340-048-0015*  
*Justification: To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.*
- 3) **Duration of Certificate:** This 401 Water Quality Certification 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 before any modification of the USACE 404 permit. Post construction stormwater facilities must be maintained for the life of the facility.  
*Rule: 40 CFR 121*  
*Justification: Certification is required for any license or permit that authorizes an activity that may result in a discharge.*
- 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.  
*Rule: OAR 340-012*  
*Justification: All parties must be aware of and comply with the 401 WQC, including on-site contractors.*
- 5) **Modification:** Any approved modifications to this certification, including a change of ownership, will incur a Tier 1 fee of \$985 at a minimum. A higher fee may be assessed for complex modifications.  
*Rule: OAR 340-048-0050*  
*Justification: To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.*
- 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.  
*Rule: OAR 340-048-0050*  
*Justification: To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.*

- 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.  
*Rule: OAR 340-048-0050*  
*Justification: To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.*
- 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:
- Access to any records, logs, and reports that must be kept under the conditions of this certification;
  - To inspect best management practices, monitoring or equipment or methods; and
  - To collect samples or monitor any discharge of pollutants.
- Rule: OAR 340-012*  
*Justification: DEQ must inspect facilities for compliance with all state rules and laws.*
- 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.  
*Rule: OAR 340-012*  
*Justification: If the project is not being constructed or operated as proposed, it may not be consistent with water quality requirements.*

### 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>

A project that disturbs one acre or more may be required to obtain a National Pollutant Discharge Elimination System 1200-C construction stormwater general permit. Contact the DEQ Stormwater Program for more information at:

<https://www.oregon.gov/deq/wq/wqpermits/Pages/Stormwater-Construction.aspx>

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

- Maintain an adequate supply of materials necessary to control erosion at the construction site
- Prohibit erosion of stockpiles. Deploy compost berms, impervious materials, or other effective methods during rain or when stockpiles are not moved or reshaped for more than 48 hours.
- 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.

**Rule:** OAR 340-041-0007(8), ORS 468B.050, CWA Section 402, OAR 340-045

**Justification:** DEQ must ensure that pollution does not enter waterways.

- 11) **Deleterious waste materials:** The Applicant is prohibited from placing biologically harmful materials and construction debris where they could enter waters of the state, including wetlands (wetlands are waters of the state). This includes, but is 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.

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; and
- f. Employ general good housekeeping practices at all times.

**Rule:** OAR 340-041-0007(8), ORS 468B.050, CWA Section 402

**Justification:** DEQ must ensure that pollution does not enter waterways.

- 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.

**Rule:** ORS 466.645(1); OAR 340-142-0030(1)(b)(B), OAR 340-041

**Justification:** DEQ must ensure that pollution does not enter waterways and must be protective of beneficial uses, including fish.

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:
  - i. Cease operations;
  - ii. Take appropriate corrective measures to prevent further environmental damage;
  - iii. Note condition of fish (dead, dying, decaying, erratic, or unusual behavior);
  - iv. Note the number, species, and size of fish in each condition;
  - v. Note the location of fish relative to operations;
  - vi. Note the presence of any apparently healthy fish in the area at the same time;
  - vii. Collect fish specimens and water samples; and
  - viii. 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).

**Rule:** ORS 466.645(1); OAR 340-142-0030(1)(b)(B), OAR 340-041

**Justification:** DEQ must ensure that pollution does not enter waterways and must be protective of beneficial uses, including fish.

14) **Vegetation Protection and Restoration:**

- a. 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.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-041-0033

**Justification:** Riparian, wetland, and shoreline vegetation help ensure excess sediment does not enter a waterway, and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.



- 15) **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.  
*Rule:* OAR 340-041, OAR 340-012, OAR 340-122, OAR 340-040  
*Justification:* DEQ must ensure that pollution does not enter waterways. As sediments are disturbed, pollutants could become redistributed.
- 16) **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.  
*Rule:* OAR 340-012  
*Justification:* DEQ must inspect facilities for compliance with all state rules and laws.

### **SPECIFIC CONDITIONS FOR POST-CONSTRUCTION STORMWATER MANAGEMENT**

- 23) **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 May 14, 2018. If proposed stormwater facilities change due to site conditions, the Applicant must receive approval in writing from DEQ to make changes.

Water quality facilities on adjacent North Barton Subdivision to the west include two vegetated bioswales, 14 vegetated on-lot bioswales, and two curb inlet bioretention chambers to collect and treat street runoff. If groundwater is encountered during construction, then a liner must be incorporated to prevent the facilities from intercepting sub-surface flow.

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.

*Rule:* ORS 468B.050, OAR 340-045, OAR 340-041

*Justification:* DEQ must ensure that pollution does not enter waterways.

- 23) **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. Monitoring facilities for signs of groundwater interception, and reconstructing the facilities as needed to prevent interception of sub-surface flow.
  - b. Maintenance techniques and frequency for each system component must follow appropriate recommendations in accepted manuals.
  - c. Long-term operation and maintenance of the two vegetated open space bioswales as well as the two curb inlet bioretention chambers will be the responsibility of City of Eagle Point for. The 14 vegetated on-lot bioswales will be the responsibility of Snyder Creek Development, LLC, unless and until an agreement transferring that responsibility to another entity is submitted to DEQ.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-045

**Justification:** DEQ must ensure that pollution does not enter waterways.

- 24) **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.

**Rule:** OAR 340-041, OAR 340-012

**Justification:** DEQ must ensure that pollution does not enter waterways.

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.

The DEQ hereby certifies this project in accordance with the Clean Water Act and state rules, with the above conditions. If you have any questions, please contact Haley Teach at [haley.teach@deq.state.or.us](mailto:haley.teach@deq.state.or.us), by phone at (503) 229-5051, or at the address on this letterhead.

Sincerely,

Steve Mrazik  
Water Quality Manager  
Northwest Region

cc: Maya Goklany, USACE  
Lauren Brown, DSL  
Michelle McMullin, NOAA  
Jason Clinch, Terra Science, Inc.