

DEQ Requests Comments on Mutual Agreement Order for Arbor Gates Estates



State of Oregon
Department of
Environmental
Quality

The Oregon Department of Environmental Quality invites the public to submit written comments on a proposed Mutual Agreement Order for the Arbor Gates Estates project in White City in Jackson County.

Summary

Patrick Huycke, (the “Applicant”) proposes to impact vernal pools in order to construct a residential subdivision.

Where can I get more information?

A link to the proposed Mutual Agreement Order is provided with this notice. You can review the file in its entirety at the DEQ Northwest Region office, 700 NE Multnomah Street Suite 600, Portland. For a review appointment, contact Anne Kim, Permit Coordinator at 503-229-5623 or email kim.anne@deq.state.or.us.

How do I participate?

You may submit your comments by mail to:

Alexandra Holecek
Western Region DEQ
165 E. 7th Ave, Suite 100
Eugene, OR 97404

Email: holecek.alex@deq.state.or.us

All comments are due by 5 p.m., Thursday, October 29, 2020. All comments will become part of the public record.

About the project

The Applicant proposes to develop a 48-lot residential subdivision including associated infrastructure likes residential roads, connector streets, utilities, and stormwater facilities by removing 493.2 Cubic Yards (cy) and discharging 1,537.2cy of material into vernal pools. The project will add 3.65 acres (ac) of new impervious surface on a 7.54ac site in the Rogue Basin. To mitigate for impacts the Applicant proposes to purchase 1.2ac credits from the Rogue Valley Vernal Pool Wetland Mitigation Bank.

What does the Mutual Agreement Order do?

DEQ is tasked with taking actions necessary for the prevention of pollution of waters of the state. In this MAO the project applicant and DEQ agree to conditions on the project that if complied with DEQ has determined will ensure that the project is unlikely to cause pollution or discharge waste in waters of the

state such that the project would violate state water quality standards.

What legal authorities apply?

- Oregon Revised Statutes 468 and 468B
- Oregon Administrative Rules Chapter 340, Divisions 041 and 045

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.

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.

Water Quality Program

700 NE Multnomah St.
Suite 600
Portland, OR 97232
Phone: 503-229-5623
800-452-4011
Contact: Anne Kim

www.oregon.gov/DEQ

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

1 *disposal of wastewater associated with the cleanup of a spill, or for an activity that does not*
2 *lend itself to the normal permitting process or permit term.”*

3 6. DEQ finds that the issuance of this MAO satisfies the conditions set forth in OAR
4 340-045-0062(1) in that it is for an activity that does not lend itself to the normal permitting process
5 or permit term.

6 7. According to OAR 340-045-0062(4), this MAO is equivalent to a Class II
7 permitting action and must be put on public notice for 30 days. The MAO was placed on public
8 notice from September 15, 2020 to October 15, 2020.

9 **NOW THEREFORE, it is stipulated and agreed that:**

10 8. The Director shall issue a final order allowing Applicant to complete its proposed
11 project provided the Applicant complies with the conditions specified in Attachment A,
12 incorporated herein. Should conditions in Attachment A be in direct conflict with the terms of
13 this MAO, the terms of this MAO shall control.

14 9. This MAO is an agreement by the applicant pursuant to ORS 468.073(1) to pay
15 the DEQ costs associated with review of this project for compliance with water quality
16 standards.

17 10. This MAO is a review of compliance with state water quality standards in OAR 340,
18 division 41 and other state law water quality requirements. This MAO will constitute a Section 401
19 Water Quality Certification, Tier 2B Review, for purposes of the federal Clean Water Act in the
20 event of federal law changes requiring a Section 401 Water Quality Certification for this project and
21 for purposes of the application of OAR 340-012-0140.

22 11. Except as provided in paragraph 12 below, this MAO resolves all civil claims of
23 DEQ against the Applicant, based upon construction of the project as described in the application
24 and in compliance with the requirements and conditions of this MAO. This MAO is not intended to
25 limit, in any way, DEQ's right to proceed against Applicant in any forum for any past or future
26 violations not expressly settled herein. Failure to comply with this order may result in the issuance
of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

1 12. The terms of this MAO may be amended by mutual agreement of DEQ and
2 Applicant. DEQ may amend the conditions in this MAO without the agreement of Applicant
3 upon finding that such modification is necessary because of changed circumstances or to protect
4 public health or the environment. If Applicant contests the Amended MAO, the applicable
5 procedures for conduct of contested cases in such matters will apply.

6 13. This MAO is not transferable unless approved by DEQ and payment of a transfer
7 fee is received. No change in ownership or corporate or partnership status relating to the facility
8 shall in any way alter Applicant's obligations under this MAO, unless otherwise approved in
9 writing by DEQ. The Applicant is responsible for the work of its contractors and sub-
10 contractors, as well as any other entity that performs work related to this MAO.

11 14. All reports, notices and other communications required under or relating to this
12 MAO should be directed to Alex Holecek, 165 E 7th Ave, Suite 100, 541-686-7763. The contact
13 person for Applicant is Patrick G. Huycke, PO Box 1402 Medford, Oregon, 541-261-1472.
14 Applicant agrees that this MAO is enforceable in all ways as a permit and that any and all
15 applications, notices, plans, records, reports, or other documents required by this MAO are required
16 by ORS 468 and 468B and implementing rules.

17 15. Applicant waives any and all rights and objections it may have to the form,
18 content, manner of service, or timeliness of this MAO. Applicant acknowledges that it has actual
19 notice of the contents and requirements of this MAO and that failure to fulfill any of the
20 requirements hereof will constitute a violation of this MAO. Respondent releases and waives any
21 and all claims of any kind, known or unknown, past or future, against the State of Oregon or its
22 agencies, instrumentalities, employees, officers, or agents, arising out of the matters and events
23 relating to the matter set out in this MAO. Any and all claims includes but is not limited to any
24 claim under 42 USC § 1983 et seq., any claim under federal or state law for damages, declaratory,
25 or equitable relief, and any claim for attorney's fees or costs.

26 16. Applicant shall allow the DEQ's representatives access to the Applicant's
property and pertinent records at all reasonable times for the purposes of making inspections,

1 surveys, collecting samples, obtaining data, reviewing and copying required records and
2 otherwise conducting all necessary functions related to this MAO in accordance with ORS
3 468.095.

4 17. The terms of this MAO become effective on the date it is signed by DEQ's
5 Regional Administrator on behalf of the Director and will terminate five years from the date of
6 the MAO. Facsimile or scanned signatures on this MAO shall be treated the same as original
7 signatures. Records required by this MAO must be maintained for the term of the MAO.

8 18. The undersigned representative of the Applicant certifies that they are authorized
9 to execute and bind Applicant to this MAO, that they have examined its application and this
10 MAO, and that they contain true and accurate information.

11 [PARTY]

12
13 _____
Date

13 _____
[PARTY REPRESENTATIVE]

14
15 **DEPARTMENT OF ENVIRONMENTAL QUALITY**

16
17 _____
Date

17 _____
[REGIONAL OR DIVISION ADMINISTRATOR]

18
19 FINAL ORDER

20 IT IS SO ORDERED:

21 **DEPARTMENT OF ENVIRONMENTAL QUALITY**

22
23 _____
Date

23 _____
[REGIONAL or DIVISION ADMINISTRATOR]
Department of Environmental Quality
Pursuant to OAR 340-045-0062(1)

ATTACHMENT A

Arbor Gates, must strictly adhere to the following conditions:

- 1) **Work Authorized:** Work authorized by this Order is limited to the work described in the Joint Permit Application signed on May 4, 2020, 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.
- 2) **MAO on Site:** A copy of this MAO 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.
- 3) **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. 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.
- 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.

- 1 d. Use removable pads or mats to prevent soil compaction at all construction access
2 points through, and staging areas in, riparian or wetland areas to prevent soil
3 compaction, unless otherwise authorized by DEQ.
- 4 e. Flag or fence off wetlands not specifically authorized to be impacted to protect
5 from disturbance and/or erosion.
- 6 f. Place dredged or other excavated material on upland areas with stable slopes to
7 prevent materials from eroding back into waterways or wetlands.
- 8 g. Place clean aggregate at all construction entrances, and utilize other best
9 management practices, including, but not limited to truck or wheel washes, when
10 earth-moving equipment is leaving the site and traveling on paved surfaces.
11 Vehicles are prohibited from tracking sediment off site.
- 12 h. This MAO does not authorize the placement of best management practices into
13 waters of the state unless specifically outlined in the application and authorized by
14 DEQ.
- 15 i. Upon completion of construction activities, stormwater facilities must be inspected
16 and adequately prepared for post-construction stormwater treatment.
- 17 j. Upon completion of construction activities, stormwater facilities must be tested to
18 ensure they are working and adequately prepared for post-construction
19 stormwater treatment.

20 **4) Deleterious waste materials:** The applicant is prohibited from placing biologically harmful
21 materials and construction debris where they could enter waters of the state, including
22 wetlands (wetlands are waters of the state). This includes but is not limited to: petroleum
23 products; chemicals; cement cured less than 24 hours; welding slag and grindings;
24 concrete saw cutting by-products; sandblasted materials; chipped paint; tires; wire; steel
25 posts; asphalt; and waste concrete.

26 The applicant must:

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

27 **5) Spill Prevention:** The applicant must have a spill prevention and control plan. The
28 applicant must fuel, operate, maintain and store vehicles and equipment, and must store
29 construction materials, in areas that will not disturb native habitat directly or result in
30 potential discharges. In general, reasonable precautions and controls must be used to
31 prevent any discharges of petroleum products or other harmful or toxic materials from

1 entering the water as a result of any in-water activities. In addition, the following specific
2 requirements apply:

- 3 a. Vehicle and motorized equipment staging, cleaning, maintenance, refueling, and
4 fuel storage must take place in a vehicle staging area 150 feet or more from any
5 waters of the state. DEQ may approve in writing exceptions to this distance if all
6 practical prevention measures are employed and this distance is not possible
7 because of any of the following site conditions:
- 8 i. Physical constraints that make this distance not feasible (e.g., steep
9 slopes, rock outcroppings)
 - 10 ii. natural resource features would be degraded as a result of this setback
 - 11 iii. Equal or greater spill containment and effect avoidance is provided even
12 if staging area is less than 150 feet away from waters of the state.
- 13 b. If staging areas are within 150 feet of any waters of the state, as allowed under
14 subsection (a)(iii) of this condition, full containment of potential contaminants
15 must be provided to prevent soil and water contamination, as appropriate.
- 16 c. All vehicles operated within 150 feet of any waters of the state must be inspected
17 daily for fluid leaks before leaving the vehicle staging area. Any leaks detected in
18 the vehicle-staging area must be repaired before the vehicle resumes operation.
- 19 d. Before operations begin and as often as necessary during operation, equipment
20 must be steam cleaned (or undergo an approved equivalent cleaning) until all
21 visible oil, grease, mud, and other visible contaminants are removed if the
22 equipment will be used below the bank of a waterbody.
- 23 e. All stationary power equipment (e.g., generators, cranes, stationary drilling
24 equipment) operated within 150 feet of any waters of the state must be covered
25 by an absorbent mat to prevent leaks, unless other suitable containment is
26 provided to prevent potential spills from entering any waters of the state.
- 27 f. An adequate supply of materials (such as straw matting/bales, geotextiles,
28 booms, diapers, and other absorbent materials) needed to contain spills must be
29 maintained at the project construction site and deployed as necessary.
- 30 g. All equipment operated in state waters must use bio-degradable hydraulic fluid.
- 31 h. A maintenance log documenting equipment maintenance inspections and actions
32 must be kept on-site and available upon request.

33 **6) Spill & Incident Reporting:**

- 34 a. If petroleum products, chemicals, or any other harmful materials are discharged
35 into state waters, or onto land with a potential to enter state waters, the applicant
36 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.

- 1 b. If the project operations cause a water quality problem which results in distressed
2 or dying fish, the applicant must immediately:
- 3 i. Cease operations;
 - 4 ii. Take appropriate corrective measures to prevent further environmental
5 damage;
 - 6 iii. Note condition of fish (dead, dying, decaying, erratic, or unusual
7 behavior);
 - 8 iv. Note the number, species, and size of fish in each condition;
 - 9 v. Note the location of fish relative to operations;
 - 10 vi. Note the presence of any apparently healthy fish in the area at the same
11 time;
 - 12 vii. Collect fish specimens and water samples; and
 - 13 viii. Notify DEQ, Oregon Department of Fish and Wildlife, National Marine
14 Fisheries Service and U.S. Fish and Wildlife Service as appropriate
15 (reporting of listed fish mortality to National Marine Fisheries Service is
16 required).

17 **7) Vegetation Protection and Restoration:**

- 18 a. The applicant must protect riparian, wetland, and shoreline vegetation in the
19 authorized project area (as defined in the permit application materials) from
20 disturbance through one or more of the following:
 - 21 i. Minimization of project and impact footprint
 - 22 ii. Designation of staging areas and access points in open, upland areas
 - 23 iii. Fencing and other barriers demarcating construction areas
 - 24 iv. Use of alternative equipment (e.g., spider hoe or crane)
- 25 b. If authorized work results in vegetative disturbance and the disturbance has not
26 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)

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- 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>

10 Additionally:

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- Unless otherwise approved in writing by DEQ, applying surface fertilizer within stormwater treatment facilities or within 50 feet of any stream channel is prohibited.
 - 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
 - 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.

22 **8) Buffers:** The Applicant shall avoid and protect from harm, all wetlands and provide a 50

23 foot buffer to waters of the state, unless proposed, necessary, and approved as part of

24 the project. If a local jurisdiction has a more stringent buffer requirement, that

25 requirement will override this MAO requirement.

26 **9) 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

1 regulations. The applicant must notify the Environmental Cleanup Section of DEQ at
2 800-452-4011 Ex.6258.

3 **10) Notification to DEQ:** The applicant must provide pre-construction notification to DEQ one
4 week before construction starts. Contact information can be found at the end of the MAO.

5 **11) Post Construction Stormwater Management:** The applicant must implement and
6 comply with the terms of the approved post-construction stormwater management plan,
7 which describes best management practices to prevent or treat pollution in stormwater
8 anticipated to be generated by the project, in order to comply with state water quality
9 standards. The applicant must implement best management practices as proposed in
10 the stormwater management plan, including operation and maintenance, dated May 28,
11 2020. If proposed stormwater facilities change due to site conditions, the applicant must
12 receive approval in writing from DEQ to make changes.

13 **A combination of low impact development infrastructure will convey and treat all
14 stormwaters from streets, roofs, and driveways from two different drainage
15 basins. Basin A stormwater will be conveyed through curb inlet catch basins and
16 treated via a 103' long vegetated, bio-infiltration swale containing a forebay, check
17 dams, 18" of amended soils, a 10 minute residency time, and a flow control device
18 prior to discharge to the Jackson County Regional Detention facility. Basin B
19 stormwater will be conveyed through curb inlet catch basins and treated via a
20 164" long vegetated, bio-infiltration swale containing a forebay, check dams, 18"
21 of amended soils, a 10 minute residency time, and a flow control device prior to
22 discharge to Whetstone Creek and the Rogue River.**

23 **Within 30 days of project completion, the applicant must submit a copy of the “as-
24 builds” or red-lined construction drawings showing all stormwater management
25 facilities**

26 **12) 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:

- Monitoring facilities for signs of groundwater interception, and reconstructing the facilities as needed to prevent interception of sub-surface flow.
- Maintenance techniques and frequency for each system component must follow appropriate recommendations in accepted manuals.
- Long-term operation and maintenance of stormwater treatment facilities will be the responsibility of the Rogue Valley Sanitary Sewer, unless and until an agreement transferring that responsibility to another entity is submitted to DEQ.

13) 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.

1 If the applicant is not satisfied with the conditions contained in this MAO, a contested case
2 hearing may be requested in accordance with Oregon Administrative Rule 340-048-0045. Such
3 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 MAO.

4 If you have any questions, please contact Alex Holecek at holecek.alex@deq.state.or.us, by
5 phone at 541-686-7763, or at the address on this letterhead.

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