



Attachment L. Permits



DSL Permit #62035-RF

Department of State Lands
775 Summer Street, Suite 100
Salem, OR 97301-1279
☎ 503-986-5200

Permit No.:	<u>62035-RF</u>
Permit Type:	<u>Removal/Fill</u>
Waters:	<u>Wetland/Willamette River/ Abernethy Creek/ McLoughlin Creek</u>
County:	<u>Clackamas</u>
Expiration Date:	<u>July 15, 2020</u>

ODOT

IS AUTHORIZED IN ACCORDANCE WITH ORS 196.800 TO 196.990 TO PERFORM THE OPERATIONS DESCRIBED IN THE REFERENCED APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:

1. This permit does not authorize trespass on the lands of others. The permit holder must obtain all necessary access permits or rights-of-way before entering lands owned by another.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit must comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action, which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. Employees of the Department of State Lands (DSL) and all duly authorized representatives of the Director must be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
6. Any permit holder who objects to the conditions of this permit may request a hearing from the Director, in writing, within twenty-one (21) calendar days of the date this permit was issued.
7. In issuing this permit, DSL makes no representation regarding the quality or adequacy of the permitted project design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196, 390, and related administrative rules.
8. Permittee must defend and hold harmless the State of Oregon, and its officers, agents and employees from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.
9. Authorization from the U.S. Army Corps of Engineers may also be required.

NOTICE: If removal is from state-owned submerged and submersible land, the permittee must comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you must comply with ORS 274.905 to 274.940 if you want a transfer of title; public rights to such filled lands are not extinguished by issuance of this permit. This permit does not relieve the permittee of an obligation to secure appropriate leases from DSL, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact Department of State Lands, 503-986-5200.

Kirk Jarvie, Southern Operations Manager
Aquatic Resource Management
Oregon Department of State Lands

Kirk Jarvie

Digitally signed by Kirk Jarvie
Date: 2019.07.15 14:49:49
-07'00'

Authorized Signature

ATTACHMENT A

Permit Holder: ODOT

Project Name: I-205: I-5 – OR 213, Phase I Sec. Abernethy

Special Conditions for Removal/Fill Permit No. 62035-RF

READ AND BECOME FAMILIAR WITH CONDITIONS OF YOUR PERMIT.

The project site may be inspected by the Department of State Lands (DSL) as part of our monitoring program. A copy of this permit must be available at the work site whenever authorized operations are being conducted.

- 1. Responsible Party:** By proceeding under this permit, ODOT agrees to comply with and fulfill all terms and conditions of this permit, unless the permit is officially transferred to another party as approved by DSL. In the event information in the application conflicts with these permit conditions, the permit conditions prevail.
- 2. Authorization to Conduct Removal and/or Fill:** This permit authorizes removal and fill of material in T2S R2E Sections 29/30, many tax lots, in Clackamas County, as referenced in the application, map and drawings (See Attachment B for project location), complete on June 6, 2019 and summarized as follows:

Summary of Authorized Wetland Impacts

Wetland #	Permanent			Temporary		
	Acres	Removal (cy)	Fill (cy)	Acres	Removal (cy)	Fill (cy)
Wetland 37	--	--	--	0.003	9	9

Summary of Authorized Waterway Impacts

Waterway Name	Permanent			Temporary		
	Linear Ft.	Removal (cy)	Fill (cy)	Linear Ft.	Removal (cy)	Fill (cy)
Willamette River	30	40,185	28,696	120	4,305	4,305
Abernathy Creek	30	4,405	3,284	175	420	420
McLoughlin Creek	340	899	784	340	2,437	2,552
Total:	400	45,489	32,764	635	7,162	7,277

*These volumes include removal and fill activities necessary to complete the required restoration and mitigation.

- 3. Work Period in Jurisdictional Areas:** Fill or removal activities below the ordinary high water elevation of Abernathy Creek must be conducted between July 1 and October 31; other than for the activities noted below, fill or removal activities below the ordinary high water elevation of Willamette River must be conducted between July 1 and October 31; drilled shaft oscillation work in the Willamette River behind the constructed coffer dams may occur between July 1 and December 31; use of the barge in the Willamette may occur year round. Extensions to these periods may only occur if coordinated with Oregon Department of Fish and Wildlife and approved

in writing by DSL. If fish eggs are observed within the project area, work must cease, and DSL contacted immediately.

4. **Changes to the Project or Inconsistent Requirements from Other Permits:** It is the permittee's responsibility to ensure that all state, federal and local permits are consistent and compatible with the final approved project plans and the project as executed. Any changes made in project design, implementation or operating conditions to comply with conditions imposed by other permits resulting in removal-fill activity must be approved by DSL prior to implementation.
5. **DSL May Halt or Modify:** DSL retains the authority to temporarily halt or modify the project or require rectification in case of unforeseen adverse effects to aquatic resources or permit non-compliance.
6. **DSL May Modify Conditions Upon Permit Renewal:** DSL retains the authority to modify conditions upon renewal, as appropriate, pursuant to the applicable rules in effect at the time of the request for renewal or to protect waters of this state.

Pre-Construction

7. **Local Government Approval Required Before Beginning Work:** Prior to the start of construction, the permittee must obtain a Development permit and Site Plan and Design Review, Variance and Natural Resource Review application required from Oregon City and a development permit from West Linn.
8. **DSL Proprietary Authorization Required Before Beginning Work:** Prior to the start of work within state-owned submerged and submersible lands, the permittee must obtain an easement from the Department of State Lands.
9. **Stormwater Management Approval Required Before Beginning Work:** Prior to the start of construction, the permittee must obtain a National Pollution Discharge Elimination System (NPDES) permit from the Oregon Department of Environmental Quality (DEQ), if one is required by DEQ.
10. **Authorization to Use Property for Linear Projects:** For linear facility projects, the removal-fill activity cannot occur until the person obtains:
 - a. The landowner's consent;
 - b. A right, title or interest with respect to the property, that is sufficient to undertake the removal or fill activity; or
 - c. A court order or judgment authorizing the use of the property
11. **Pre-construction Resource Area Fencing or Flagging:** Prior to any site grading, the boundaries of the avoided wetlands, waterways, and riparian areas adjacent to the project site must be surrounded by noticeable construction fencing or flagging. The marked areas must be maintained during construction of the project and be removed immediately upon project completion.

General Construction Conditions

12. **Water Quality Certification:** The Department of Environmental Quality (DEQ) may evaluate this project for a Clean Water Act Section 401 Water Quality Certification (WQC). If the evaluation results in issuance of a Section 401 WQC, that turbidity condition will govern any allowable turbidity exceedance and monitoring requirements.
13. **Erosion Control Methods:** The following erosion control measures (and others as appropriate) must be installed prior to construction and maintained during and after construction as appropriate, to prevent erosion and minimize movement of soil into waters of this state.
- a. All exposed soils must be stabilized during and after construction to prevent erosion and sedimentation.
 - b. Filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures must be used to prevent movement of soil into waterways and wetlands.
 - c. To prevent erosion, use of compost berms, impervious materials or other equally effective methods, must be used to protect soil stockpiled during rain events or when the stockpile site is not moved or reshaped for more than 48 hours.
 - d. Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian and wetland areas must use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waived upon approval by DSL. At project completion, disturbed areas with soil exposed by construction activities must be stabilized by mulching and native vegetative plantings/seeding. Sterile grass may be used instead of native vegetation for temporary sediment control. If soils are to remain exposed more than seven days after completion of the work, they must be covered with erosion control pads, mats or similar erosion control devices until vegetative stabilization is installed.
 - e. Where vegetation is used for erosion control on slopes steeper than 2:1, a tackified seed mulch must be used so the seed does not wash away before germination and rooting.
 - f. Dredged or other excavated material must be placed on upland areas having stable slopes and must be prevented from eroding back into waterways and wetlands.
 - g. Erosion control measures must be inspected and maintained as necessary to ensure their continued effectiveness until soils become stabilized.
 - h. All erosion control structures must be removed when the project is complete, and soils are stabilized and vegetated.
14. **Fuels, Hazardous, Toxic, and Waste Material Handling:** Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint, wood treated with leachable preservatives or other deleterious waste materials must not be allowed to enter waters of this state. Machinery and equipment staging, cleaning, maintenance, refueling, and fuel storage must be at least 150 feet from OHW or HMT and wetlands to prevent contaminants from entering waters of the state. Refueling is to be confined to a designated area to prevent spillage into waters of this state. Barges must have containment system to effectively prevent petroleum products or other deleterious material from entering waters of this state. Project-related spills into waters of this state or onto land with a potential to enter waters of this state must be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311.

15. **Archaeological Resources:** If any archaeological resources, artifacts or human remains are encountered during construction, all construction activity must immediately cease. The State Historic Preservation Office must be contacted at 503-986-0674. You may be contacted by a Tribal representative if it is determined by an affected Tribe that the project could affect Tribal cultural or archeological resources.
16. **Construction Corridor:** There must be no removal of vegetation or heavy equipment operating or traversing outside the designated construction corridor or footprint (Figures 5-3A through 5-18).
17. **Hazards to Recreation, Navigation or Fishing:** The activity must be timed so as not to unreasonably interfere with or create a hazard to recreational or commercial navigation or fishing.
18. **Operation of Equipment in the Water:** Heavy equipment may be positioned below ordinary high water or highest measured tide if the area is isolated from the waterway and aquatic organism salvage is completed. All machinery operated below ordinary high water (OHW) or highest measured tide (HMT) elevation must use vegetable-based hydraulic fluids, be steam cleaned and inspected for leaks prior to each use, and be diapered to prevent leakage of fuels, oils, or other fluids below OHW or HMT elevation. Any equipment found to be leaking fluids must be immediately removed from and kept out of OHW or HMT until repaired.
19. **Work Area Isolation:** The work area must be isolated from the water during construction by using a coffer dam or similar structure. All structures and materials used to isolate the work area must be removed immediately following construction and water flow returned to pre-construction conditions.
20. **Fish Salvage Required:** Fish must be salvaged from the isolation area. Permits from NOAA Fisheries and Oregon Department of Fish and Wildlife, Fish Research are required to salvage fish. Fish salvage permit information may be obtained by contacting ODFW Fish Research at 503-947-6254 or Fish.Research@state.or.us.
21. **Fish Passage Required:** The project must meet Oregon Department of Fish and Wildlife requirements for fish passage.
22. **Raising or Redirecting Water:** The project must not cause water to rise or be redirected and result in damage to structures or property on the project site as well as adjacent, nearby, upstream, and downstream of the project site.

Pilings

23. **Method of Piling Placement:** Pilings must be placed by means of vibratory hammer. An impact hammer is allowed only as necessary for proofing the pile.
24. **Sound Reduction:** To reduce sound impacts to fish from an impact hammer, a fully-confined bubble curtain will be used if installation requires impact proofing.
25. **Method of Piling Removal:** Removal of pile must be conducted by means of vibratory removal and pulling. Piles that cannot be extracted by this method must be cut off 3 feet below the stream bed.

26. **Leachable Preservatives Prohibited:** There must be no wood products treated with creosote or other leachable preservatives in the new structure.
27. **Waste Piling Disposal:** Old piling and other waste material must be disposed of in a disposal facility approved for this purpose. There must be no temporary storage of piling or other waste material below top of bank or in any wetland, Federal Emergency Management Administration designated floodway, or an area historically subject to landslides.

Site Rectification

28. **Abernathy Creek Rectification and Improvements:** The existing riprap and streambed must be reconfigured to create a low flow channel; fish rocks and large woody material must be added to provide fish passage and stabilize the channel. The large wood must be incorporated in the form and manner described in the application and Figures 5-14 and 5-15.
29. **McLoughlin Creek and Wetland 37 Rectification and Improvements:** The final completed contours of the wetland and stream will be restored and planted as described in the application. The slope of the McLoughlin Creek channel must be the same or flatter the pre-construction conditions; the width must be equal to or greater than pre-construction conditions.
30. **Trenching in Wetland 37:** During trenching or excavation, the top layer of soil must be separated from the rest of the excavated material and put back on top when the trench or pit is back-filled. If the native underlying soils are not used as bedding material and a coarser, non-native soil or other material is used, preventative measures such as clay or concrete plugs must be used so that underground hydraulic piping does not dewater the site and adjacent wetlands.
31. **Pre-construction Elevations Must Be Restored Within the Same Construction Season:** Construction activities within areas identified as temporary impact must not exceed two construction seasons and rectification of temporary impacts must be completed within 24 months of the initiation of impacts. However, if the temporary impact only requires one construction season, re-establishment of pre-construction contours must be completed within that same construction season, before the onset of fall rains.
32. **Planting in Soils and Riprap Required:** Disturbed areas above OHW must be planted and seeded immediately following establishment of final contours. Planting of native woody vegetation must be completed during the time of year that provides the optimal chances of survival immediately following construction (Figure FA13 [Abernathy Creek], FA14 and FA15 [McLoughlin Creek and Wetland 37]).
33. **Woody Vegetation Planting Required:** Planting of native woody vegetation must be completed before the next growing season after re-establishment of the pre-construction contours (Figure FA13 [Abernathy Creek], FA14 and FA15 [McLoughlin Creek and Wetland 37]).

Monitoring and Reporting Requirements

34. **Post-Construction Report Required:** A post-construction report demonstrating as-built conditions and discussing any variation from the approved plan must be provided to DSL with the first monitoring report. The post-construction report must include:

- a. A scaled drawing, accurate to 1-foot elevation, clearly showing the following:
 1. Finished contours of the site.
 2. The riprap removal area pre- and post-project contours
 3. The streambed as reconfigured, including low flow channel, fish rocks, and large woody material
 4. Photo point locations.
- b. Photos from fixed photo points. This should clearly show the site conditions
- c. A narrative that describes any deviation from the plan.

35. Annual Monitoring Reports Required: Monitoring is required until DSL has officially released the site from further monitoring. The permittee must monitor the site to determine whether the site is meeting performance standards for a minimum period of 3 growing seasons after completion of all the initial plantings. Annual monitoring reports are required and are due by December 31. Failure to submit the required monitoring report by the due date may result in an extension of the monitoring period or enforcement action.

36. Extension of the Monitoring Period: The monitoring period may be extended, at the discretion of DSL, for failure of the site to meet performance standards for the final two consecutive years without corrective or remedial actions (such as irrigation, significant weed/invasive plants treatment or replanting) or when needed to evaluate corrective or remedial actions.

37. Contents of the Annual Monitoring Report: The annual monitoring report must include the following information:

- a. Completed Monitoring Report Cover Sheet, which includes permit number, permit holder name, monitoring date, report year, performance standards, and a determination of whether the site is meeting performance standards.
- b. Site location map(s) that clearly shows the site boundaries.
- c. Site Plan that clearly shows at least the following.
 1. The area seeded, with the square foot area listed.
 2. The area planted with trees and shrubs, with the square foot area listed.
 3. Permanent monitoring plot locations that correspond to the data collected and fixed photo-points. These points should be overlaid on the as-built map.
- d. A brief narrative that describes maintenance activities and recommendations to meet success criteria. This includes when irrigation occurred and when the above ground portion of the irrigation system was or will be removed from the site.
- e. Data collected to support the conclusions related to the status of the site relative to the performance standards listed in this permit (include summary/analysis in the report and raw data in the appendix). Data should be submitted using the DSL Mitigation Monitoring Vegetation Spreadsheet or presented in a similar format as described in DSL's Routine Monitoring Guidance for Vegetation.
- f. Photos from fixed photo points (include in the appendix).
- g. Other information necessary or required to document compliance with the performance standards listed in this permit.

38. Corrective Action May Be Required: DSL retains the authority require corrective action in the event the performance standards are not accomplished at any time within the monitoring period.

Performance Standards for Wetland 37 Rectification

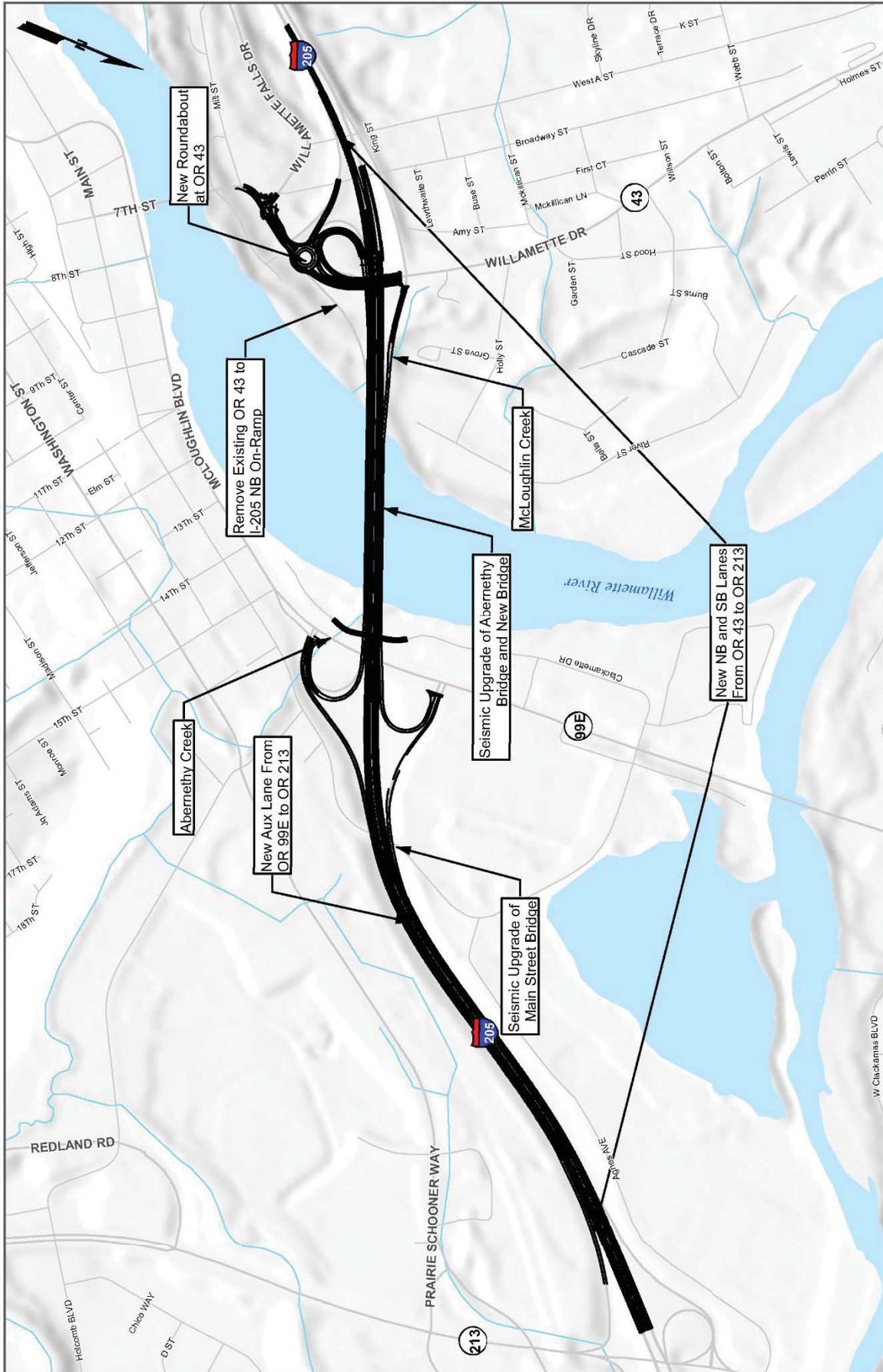
- 39. **Establishment of Permanent Monitoring Locations Required:** Permanent plot locations must be established during the first annual monitoring in sufficient number and locations to be representative of the site. The permanent plot locations must be clearly marked on the ground.
- 40. **Wetland 37 Acreage Required:** The proposed impacts at Wetland 37 will have a minimum 0.003 acres as determined by hydrology data collected during spring of a year when precipitation has been near normal, vegetation has been established, and irrigation has been removed for at least two years.
- 41. **Native Species Cover:** The cover of native species, as defined in the USDA Plants Database, in the herbaceous stratum is at least 60%.
- 42. **Invasive Species Cover:** The cover of invasive species is no more than 20%. A plant species should automatically be labeled as invasive if it appears on the current Oregon Department of Agriculture noxious weed list.

Performance Standards for McLoughlin and Abernethy Creeks Rectification

- 43. **Woody Vegetation:** The density of woody vegetation is at least 1 live native shrubs or tree every 6 linear feet on each disturbed waterway bank. Native species volunteering on the site may be included, dead plants do not count, and the standard must be achieved for 2 years without irrigation.

Monitoring and Reporting Schedule

Report	Requirements	Schedule
Post-Construction and First Annual Report	Post-construction report Establishment of permanent monitoring locations Vegetation performance standards Demonstration that wetland hydrology has been accomplished	After one growing season of all proposed plantings
Second Annual Report	Vegetation performance standards	After two growing seasons
Third Annual Report (or final report if the monitoring period has been extended)	Vegetation performance standards Actual acreage achieved by HGM and Cowardin class ¹ .	After three or final monitoring season



I-205 ABERNETHY
PROJECT ELEMENTS
FIGURE 5 - 1





DEQ 401 Water Quality Certification



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

November 26, 2019

Denis Reich, Environmental Manager
Oregon Department of Transportation (ODOT), Region 1
123 NW Flanders Street
Portland, OR 97209-4012

RE: NWP-2016-00458-4; I-205: I-5 – OR 213, Phase I Sec. Abernethy 401 Water Quality Certification

The Oregon Department of Environmental Quality (DEQ) has reviewed the U.S. Army Corps of Engineers (USACE) permit application #NWP-2016-458-4 (Department of State Lands [DSL] #62035), pursuant to a request for a Clean Water Act Section 401 Water Quality Certification (WQC) received on July 30, 2019. DEQ's 401 Water Quality Certification circulated with the Corps' public notice, and DEQ received no water quality comments.

According to the Joint Permit Application, The Oregon Department of Transportation (the "Applicant") proposes to impact the Willamette River, McLoughlin Creek, Abernethy Creek, and a wetland adjacent to McLoughlin Creek, by excavating 52,660 cubic yards (cy) of earthen material and discharging 40,050 cy of fill material. The purpose of the project is to seismically retrofit and widen the Abernethy and Main Street Bridges, and create auxiliary lanes proximal to these bridges. The project is located in wetlands adjacent, and tributaries that discharge to the Willamette River at river mile 25, West Linn, Clackamas County, Oregon (Sections 29 and 30, Township 2S/ Range 2E).

Project Description: The proposed project work will impact 1.85 acres of waterbodies in order to seismically retrofit and widen the Abernethy and Main Street Bridges. The Applicant will construct five new in-water support piers adjacent to existing piers. The existing piers will then be cut to a depth of approximately 5 feet below existing ground. Riprap will be removed from the existing pier sites as well, to a depth of 5-feet below ground surface and 10-feet in diameter around each removed in-water pier. Approximately 33,375 to 50,733 square feet of riprap is expected to be removed from the Willamette River to allow for pile and drilled shaft installation. The Applicant will also widen the bridge, adding northbound and southbound lanes to I-205 between the OR 43 Interchange and the OR 99 Interchange, and an auxiliary lane on I-205 between OR 99 and OR 213. The purpose of this project is to reduce congestion and provide necessary seismic upgrades to the structural supports to the Abernethy and Main Street Bridges. In addition, Abernethy Creek will be re-aligned and riprap will be removed to accommodate the Pier 3 drilled shaft. A temporary work bridge will be required for work within the Willamette River, and is expected to remain in place for up to 4 years. Construction activities will result in a total of 21 acres of ground disturbance.

The project will create 31.336-acres of impervious surface. As mitigation for this loss, the Applicant has proposed compensatory wetland mitigation through on-site permittee responsible mitigation, including riparian bank work along Abernethy Creek, the realignment of Abernethy

Creek with improved fish passage and enhancements, the realignment of McLoughlin Creek, and the restoration of a wetland identified as Wetland 37.

Status of Affected Waters of the State: 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 aldrin, biological criteria, chlordane, chlorophyll a, copper, cyanide, DDE 4,4, DDT 4,4, dieldrin, hexachlorobenzene, iron, lead, pentachlorophenol, PCBs, and PAHs; and has Environmental Protection Agency Total Maximum Daily Loads (TMDLs) developed for the parameters of temperature, dioxin, mercury, and *E.coli*.

The above listed parameters impair the following beneficial uses in the Willamette 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, hydropower, commercial navigation and transportation.

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 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 May 9, 2019 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 in the permit application materials, the Applicant is not in compliance with this 401 Water Quality Certification and may be subject to enforcement.
- 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. Post construction stormwater facilities must be maintained for the life of the facility.
- 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, USACE, 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. Complex modifications may be charged a higher fee.

- 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 may potentially 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 entering 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 must do the following, unless otherwise authorized by DEQ:

- a. Maintain an adequate supply of materials necessary to control erosion at the construction site
- b. Deploy compost berms, impervious materials, or other effective methods during rain 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 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 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, and 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 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, Loosen and aerate compacted soil in 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) Maintain existing vegetative buffers to a minimum of 50 feet during construction and post-construction to protect riparian areas and wetlands, unless described in the application and 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 IN-STREAM WORK

- 18) **Fish Protection/ Oregon Department of Fish and Wildlife Timing:** The Applicant must perform in-water work only within the Oregon Department of Fish and Wildlife preferred time window as specified in the *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources* (please follow the link: https://www.dfw.state.or.us/lands/inwater/Oregon_Guidelines_for_Timing_of_%20InWater_Work2008.pdf) or as authorized otherwise under a Department of State Lands removal/fill permit. Exceptions to the timing window must be recommended by Oregon Department of Fish and Wildlife and/or the National Marine Fisheries Services as appropriate.
- 19) **Aquatic Life Movements:** Any activity that may disrupt the movement of aquatic life living in the water body, including those species that normally migrate through the area, is prohibited. The Applicant must provide unobstructed fish passage at all times during any authorized activity. Exceptions must be reviewed and recommended by Oregon Department of Fish Wildlife and/or the National Marine Fisheries Service as appropriate.
- 20) **Isolation of In-Water Work Areas:** The Applicant must isolate in-water work areas from the active flowing stream, unless otherwise authorized as part of the approved application, or authorized by DEQ.
- 21) **Cessation of Work:** The Applicant must cease project operations under high-flow conditions that will result in inundation of the project area. Only efforts to avoid or minimize turbidity or other resource damage as a result of inundation of the exposed project area are allowed during high-flow conditions.
- 22) **Turbidity:** The Applicant must implement best management practices to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10 percent above natural stream turbidity is prohibited except as specifically noted below:
 - a. **Monitoring:** Turbidity monitoring must be conducted and recorded as described below. Monitoring must occur at two-hour intervals each day when in-water work is being conducted. A properly calibrated turbidimeter is

required. Visual gauging may be acceptable with prior written approval from DEQ; however, *turbidity that is visible over background is prohibited*.

- i. **Representative Background Point:** The Applicant must take and record a turbidity measurement every two hours during in-water work at an undisturbed area 100 feet up-current from the in-water disturbance, in order to establish background turbidity levels. The background turbidity, location, date, tidal stage (if applicable) and time must be recorded immediately prior to monitoring down-current at the compliance point described below.
 - ii. **Compliance Point:** The Applicant must monitor every two hours, 100 feet downcurrent from the disturbance, at approximately mid-depth of the waterbody and within any visible plume. The turbidity, location, date, tidal stage (if applicable) and time must be recorded for each measurement.
- b. **Compliance:** The Applicant must compare turbidity monitoring results from the compliance points to the representative background levels taken during each two hour monitoring interval. Pursuant to Oregon Administrative Rules 340-041-0036, short-term exceedances are allowed as followed:

MONITORING WITH A TURBIDIMETER		
ALLOWABLE EXCEEDANCE TURBIDITY LEVEL	ACTION REQUIRED AT 1 ST MONITORING INTERVAL	ACTION REQUIRED AT 2 ND MONITORING INTERVAL
0 to 5 NTU above background	Continue to monitor every 2 hours	Continue to monitor every 2 hours
6 to 29 NTU above background	Modify BMPs & continue to monitor every 2 hours	Stop work after 4 hours at 6-29 NTU above background
30 to 49 NTU above background	Modify BMPs & continue to monitor every 2 hours	Stop work after 2 confirmed hours at 30-49 NTU above background
50 NTU or more above background	Stop work	Stop work immediately and inform DEQ

If an exceedance occurs at: 50 NTU or more over background; 30 NTU over background for two hours; or 5-29 NTU over background for four hours, the activity must stop immediately and the Applicant must inform DEQ.

- c. **Reporting:** The Applicant must record all turbidity monitoring required by subsections (a) and (b) above in daily logs. The daily logs must include calibration documentation; background NTUs; compliance point NTUs; comparison of the points in NTUs; location; date; time; and tidal stage (if applicable) for each reading. Additionally, a narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions. Applicant must make available copies of daily logs for turbidity monitoring to DEQ, USACE, National Marine Fisheries Service, U.S. Fish and Wildlife Service, and Oregon Department of Fish and Wildlife upon request. An example turbidity log is attached to this certification.

If turbidity monitoring cannot be conducted due to dry conditions, the Applicant must provide photo documentation with a date and time stamp.

- d. **Best Management Practices to Minimize In-stream Turbidity:** The Applicant must implement the following best management practices, unless accepted in writing by DEQ:
- i. Sequence/Phasing of work – The Applicant must schedule work activities to minimize in-water disturbance and duration of in-water disturbances.
 - ii. Bucket control - All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket must be completed to minimize turbidity. All practical techniques such as employing an experienced equipment operator, not dumping partial or full buckets of material back into the wetted stream, adjusting the volume, speed, or both of the load, or using a closed-lipped environmental bucket must be implemented.
 - iii. The Applicant must limit the number and location of stream-crossing events. Establish temporary crossing sites as necessary at the least sensitive areas and amend these crossing sites with clean gravel or other temporary methods as appropriate, to discharge sediments to the waterbody.
 - iv. Machinery may not be driven into the flowing channel, unless authorized in writing by DEQ.
 - v. Excavated material must be placed so that it is isolated from the water's edge or wetlands, and not placed where it could re-enter waters of the state uncontrolled.
 - vi. Containment measures such as silt curtains, geotextile fabric, and silt fences must be in place and properly maintained in order to minimize in-stream sediment suspension and resulting turbidity.

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 October 1, 2019. If proposed stormwater facilities change due to site conditions, the Applicant must receive approval in writing from DEQ to make changes.

Stormwater Facility Description: The Applicant will implement nine water quality treatment facilities (WQF) to adequately treat stormwater runoff generated by this project.

WQF #1 is a vegetated bioinfiltration swale/detention basin that discharges to Abernathy Creek.

WQF #2 is a bioslope that discharges to an existing roadside ditch before conveyance to the Clackamas River.

WQF #3 is a bioinfiltration swale that discharges to the Clackamas River.

WQF #4 is a bioinfiltration swale that discharges to the Willamette River.

WQF #5 is a bioinfiltration swale that discharges to the Willamette river.

WQF #6 is a bioinfiltration swale that discharges upland of an unnamed creek.

WQF #7 and #8 are bioinfiltration swales that discharges to a proposed riprap pad underneath the Abernathy Bridge before entering the Willamette River.

WQF #9 is a stormwater planter that discharges into the Willamette River.

Stormwater facilities designed to infiltrate runoff must be delineated with orange construction fencing to avoid compaction until completion of the project.

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.

- 24) **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 ODOT, unless and until an agreement transferring that responsibility to another entity is submitted to DEQ.
- 25) **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 dissatisfied 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 Noosheen Pouya at Pouya.Noosheen@DEQ.state.or.us, by phone at (503)229-5785, or at the address on this letterhead.

Sincerely,



Steve Mrazik
Water Quality Manager
Northwest Region

ec: Melody White, USACE
Melinda Butterfield, DSL
Cory Gieseke, HDR



USACE Permit # NWP-2016-458-2



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT
P.O. BOX 2946
PORTLAND, OR 97208-2946

December 18, 2019

Regulatory Branch
Corps No. NWP-2016-458-2

Denis Reich
ODOT Region 1
123 NW Flanders Street
Portland OR 97209
Denis.A.Reich@odot.state.or.us

Dear Mr. Reich:

Enclosed is your fully executed Department of the Army Permit. Please carefully read the permit and its conditions. This permit is based on the project description and construction methods provided in your permit application. If you propose changes to the project, you must submit revised plans to this office and receive our approval of the revisions prior to performing the work.

The time limit to complete the authorized work is in General Condition 1. If the work cannot be completed prior to the time limit, you may apply for a time extension. We recommend you apply for a time extension at least 90 days before the time limit is reached.

Failure to comply with all terms and conditions of this permit could result in a violation of Section 404 of the Clean Water Act. You must also obtain all local, State, and other Federal permits that apply to this project.

We would like to hear about your experience working with the Portland District Regulatory Branch. Please complete a customer service survey form at the following address: http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

If you have any questions, please contact me at the letterhead address, by telephone at (503) 808-4387, or email Carrie.L.Bond@usace.army.mil.

Sincerely,

Kristen Hafer
Policy and Compliance Section Chief

Enclosures

cc:

Oregon Department of Transportation (Sargent)

Oregon Department of State Lands (Klassen)

Oregon Department of Environmental Quality (401applications@deq.state.or.us)

HDR, Inc. (Brian Bauman, Brian.Bauman@hdrinc.com)

DEPARTMENT OF THE ARMY PERMIT

Permittee: Oregon Department of Transportation, Region 1
123 NW Flanders Street
Portland, Oregon 97209

Permit No: NWP-2016-458-2

Issuing Office: U.S. Army Corps of Engineers, Portland District

NOTE: The term "you" and its derivatives as used in this permit means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

The project would result in construction related activities below the ordinary high water mark (OHWM) in a total of 1.8 acres of tributaries and wetlands to seismically retrofit and widen two bridges while reducing traffic congestion in the project area with additional through lanes. The I-205 Abernethy Bridge across the Willamette River and the I-205 Bridge over Main Street would be seismically retrofitted to withstand the Cascadia Seismic Event. Additionally, the project would add a northbound and southbound travel lane to I-205 between the OR 43 interchange and OR 99 interchange, and an I-205 northbound auxiliary lane between OR 99 and OR 213. The Abernethy Bridge would be widened to include an additional through-lane and wider shoulder in both northbound and southbound lanes (additional 16 feet of roadway width in both directions). The widening would be supported by larger in-water support piers upstream and downstream of current piers.

Willamette River: The applicant would construct new drill shafts and columns that would result in permanent fill of 0.146 acre below the OHWM of the Willamette River. Each pier will consist of two, 12-foot diameter drilled shafts. Prior to drilling, a casing will be placed to contain sediment generated during drilling activities; the casings would affect 0.18 acre below the OHWM of the Willamette River. When drilled shafts and columns are constructed, a 30-square-foot coffer dam would be placed around each structure, and sediments within each coffer dam will be removed.

Each pile footing cap for the bridge has existing riprap in place. Construction of the new drilled shafts may require the removal of the riprap. Riprap would be removed using a clamshell bucket and placing the removed material in uplands. Removal activities would affect up to 1.16 acres of the Willamette River around the existing piers.

Construction of the new piers would require a temporary work bridge to be constructed. The temporary bridge would remain in place for 4 years and would require the installation of 740, 24-inch-diameter steel piles installed and removed with the use of a vibratory hammer.

Upon completion of the new piers, the existing piers would be removed. Removal activities include removing the columns to five feet below the existing substrate and leaving the footings in place. Any remaining existing riprap would also be removed to five feet below the existing ground surface within a ten-foot diameter around each pier. This would result in the removal of 0.14 acre of pier material and an additional 1.16 acres of riprap, as described above.

Abernethy Creek: Pier three is located within the Abernethy Creek channel. Construction of the new pier and channel grading activities would result in a total discharge of fill material into 0.48 acre below the OHWM of Abernethy Creek. The applicant would remove the existing rip-rap and 0.25 acres of soil to reconstruct and grade the new stream channel. The reconstructed stream channel would become a low flow channel and will include rocks with large wood to stabilize the channel. A temporary work bridge with steel piles would be constructed and in place for 4 years within Abernethy Creek .

McLoughlin Creek and adjacent wetland: The proposed project would place permanent foundations below the OHWM of the creek for the required footing expansions for Pier 10. The permanent discharge of fill would be placed below the OHWM in 53 square feet of the creek. McLoughlin Creek would be temporarily piped for 340 linear feet to avoid and minimize sedimentation during pier construction. A diversion pipe to redirect flow during construction will be placed in Wetland 37 (W-37). A 145 square foot temporary construction pad for the crane will also be placed in W-37 for the duration of the construction period. W-37 will be restored to preconstruction conditions following the completion of construction activities and removal of the temporary fills. Sandbag barriers would be placed upstream and downstream of McLoughlin Creek. The diversion pipe and sandbags constitute a temporary discharge of 28 cubic yards of fill material over 2 square feet below the OHWM. Pier C3-3 would be removed and re-installed in the creek resulting in 1489 square feet of fill below the OHWM.

In-water work window (IWW) extensions were requested for the following activities:

- 1) Use of a barge all year long.
- 2) To complete drilled shafts - July 1 to December 31, 2020 (extending preferred IWW of October 31 to December 31)
- 3) Drilled shaft construction below the OHWM of the Willamette River but outside and above the actively flowing channel – any time during the year. Outside of the preferred IWW will occur within an isolation structure.

Purpose: To reduce congestion and provide seismic upgrades to the structural supports of the Abernethy and Main Street Bridges.

Project Location: The project is located in the Willamette River, McLoughlin Creek, Abernethy Creek, and Wetland-37 (W-37) at I-205 from the OR 43 interchange north to the OR 213 interchange, near West Linn in Clackamas County, Oregon at Latitude/Longitude 45.3644, -122.6045.

Drawings: Twenty (20) drawings/maps (Attachment 1)

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on December 18, 2024. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition No. 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions (Attachment 2).
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

a. Upon starting the activities authorized by this permit, Permittee shall notify the U.S. Army Corps of Engineers, Portland District, Regulatory Branch that the work has started. Notification shall be provided by e-mail to cenwp.notify@usace.army.mil and the email subject line shall include: NWP-2016-458-2, ODOT Clackamas County.

b. Permittee shall complete and sign the enclosed Compliance Certification (Attachment 3). Permittee shall submit the completed certification to the U.S. Army Corps of Engineers, Portland District, Regulatory Branch within 30 days of completion of the authorized activity. The completed certification shall be provided by e-mail to cenwp.notify@usace.army.mil and the email subject line shall include: NWP-2016-458-2, ODOT Clackamas County. If you are submitting files larger than 10 MB, contact your county Regulatory Project Manager for instructions.

c. All in-water work shall be performed during the in-water work period of July 1 to December 31, to minimize impacts to aquatic species. Exceptions to this time period requires specific approval from the Corps and the National Marine Fisheries Service.

d. This Corps permit does not authorize you to take an endangered species. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a biological opinion under ESA Section 7, with "incidental take" provisions with which you must comply). The Federal Highway Administration (FHWA) is the lead federal agency for ESA consultation for this project. The FHWA, or its designee, has determined the proposed project meets the requirements of the programmatic opinion prepared by the National Marine Fisheries Service (NMFS), titled *Endangered Species Act Programmatic Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response Federal-Aid Highway Program in the State of Oregon* dated November 28, 2012 (NMFS Reference Number 2011/02095) which contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the "incidental take" that is also specified in the opinions. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the referenced opinion, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the opinion, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute noncompliance with your Corps permit. It is your responsibility to obtain a copy of the terms and conditions from the lead federal agency. The NMFS is the appropriate authority to determine compliance with the terms and conditions its opinion, and with the ESA.

e. Permittee shall dispose of excavated materials at a suitable upland location, and materials shall be adequately stabilized to minimize increases in turbidity levels and indirect impacts to wetlands and other aquatic systems. The material shall be placed in a location and manner that prevents its discharge into waterways or wetlands. In the event of spills, affected material shall be taken to an appropriate upland location (and properly disposed of in accordance with any state standards or requirements).

f. Permittee shall ensure all appropriate sediment and erosion control devices are installed and in proper working order prior to construction. Devices shall remain in place until the area is stabilized and construction is complete. If necessary, sediment and erosion control may be left in place after construction is complete to facilitate stabilization. However, upon stabilization all devices shall be removed from the area and disposed of in an upland location.

g. Permittee shall isolate and confine the worksite from the active channel to minimize turbidity and prevent pollutants from entering the waterbody, except in the Willamette River.

h. Permittee shall take the necessary precautions to prevent any petroleum products, chemicals, or deleterious or toxic materials from entering waterways during construction.

i. Heavy equipment shall be clean and free of leaks when operated in or near the active channel. All vehicles shall be stored and fueled a minimum of 150 feet from any waterbody unless there is secondary containment.

j. All practicable erosion control devices shall be installed and maintained in good working order throughout construction to prevent the unauthorized discharge of material into a wetland or tributary and minimize increases in turbidity resulting from the work. The devices shall be installed in a manner to maximize their effectiveness, e.g., sediment fences shall generally be buried or similarly secured. These controls shall be maintained until permanent erosion controls are in-place or are no longer necessary.

k. Permittee shall inspect the erosion control devices on a frequency basis to confirm that they are in proper working order. Any maintenance necessary shall be implemented immediately prior to the continuation of construction activities.

l. Immediately upon completion of the work in wetlands, permittee shall fully remove the temporary fill, restore the grade and re-vegetate the project area, including the specific area to prevent degradation of the aquatic habitat/resource.

m. Permittee shall fully implement the Restoration Plan included in

Attachment 4.

n. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the U.S Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
- () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this Authorization:

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.



(PERMITTEE SIGNATURE)

12-18-19

(DATE)

DENIS REICH

(PRINTED NAME)

ODOT REGION 1
ENVIRONMENTAL MANAGER

(TITLE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

**FOR THE COMMANDER, AARON L. DORF, COLONEL, CORPS OF ENGINEERS,
DISTRICT COMMANDER:**

(DISTRICT COMMANDER)

18 December 2019

(DATE)

William D. Abadie
Chief, Regulatory Branch

When the structures or work authorized by this permit are still in existence at the time the property is transferred , the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign below.

PERMIT TRANSFEREE:

Transferee Signature

DATE

Name (Please print)

Address

City, State, and Zip Code

