



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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June 21, 2021

ACH Homes, LLC  
ATTN: Justin Lagers  
9675 SE 36th Street, Suite 105  
Mercer Island, WA 98040

RE: Water Quality Certification Order No. **20094** for Corps Reference No. **NWS-2020-0705**,  
Newport Hills Creek Culvert Replacement and Road Improvements (May Creek  
Assemblage Project), Newcastle, King County, Washington

Dear Justin Lagers:

On October 8, 2020, Ecology received a pre-filing meeting request for the Newport Hills Creek Culvert Replacement and Road Improvements (May Creek Assemblage Project), Newcastle, King County, Washington. On April 12, 2021, ACH Homes, LLC submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act. However, the Department of Ecology did not consider it a valid request until April 23, 2021.

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the Section 401 Request and supporting documents complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. This WQC is subject to the conditions contained in the enclosed Order.

Please ensure that anyone doing work under this Order has read, is familiar with, and is able to follow all of the provisions within the attached Order.

If you have any questions about this decision, please contact Neil Molstad at (425) 389-5549. The enclosed Order may be appealed by following the procedures described within the Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Burcar", is written over a horizontal line.

Joe Burcar, Section Manager  
Shorelands and Environmental Assistance Program  
Northwest Regional Office

Enclosure

Sent by electronic mail: [justin@americanclassichomes.com](mailto:justin@americanclassichomes.com)

e-cc:

Samantha Stanford, Corps of Engineers  
Andrew Shuckhart, Corps of Engineers  
Matthew Bennett, Corps of Engineers  
Kenny Booth, The Watershed Company  
Yoshio Piediscalzi, D.R. Strong Consulting Engineers, Inc.  
Martin Fox, Muckleshoot Tribe  
Larry Fisher, WDFW  
Loree' Randall, Ecology  
Rebekah Padgett, Ecology  
ECY RE FEDPERMITS

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER # 20094</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. NWS-2020-0705</b>
<b>CERTIFICATION TO</b>	)	Newport Hills Creek Culvert Replacement and
<b>ACH Homes, LLC</b>	)	Road Improvements (May Creek Assemblage
pursuant to 33 U.S.C. 1341 (FWPCA	)	Project), Newport Hills Creek and associated
§ 401), RCW 90.48.120, RCW 90.48.260	)	wetland, located in Newcastle, King County,
and Chapter 173-201A WAC	)	Washington.

ACH Homes, LLC  
Attn: Justin Lagers  
9675 SE 36th Street, Suite 105  
Mercer Island, WA 98040

On October 8, 2020, ACH Homes, LLC submitted a pre-filing meeting request to the Department of Ecology (Ecology). On April 9, 2021, Ecology and ACH Homes, LLC were notified by the Seattle District Corps of Engineers (Corps) that they would be reviewing the above project under a Nationwide Permit 29 and would require an individual Section 401 Water Quality Certification (WQC). On April 12, 2021, ACH Homes, LLC submitted a request for a Section 401 WQC under the federal Clean Water Act for the Newport Hills Creek Culvert Replacement and Road Improvements (May Creek Assemblage Project), Newcastle, King County, Washington. On April 23, 2021, ACH Homes, LLC submitted additional information and Ecology considered the Request valid on this date. Ecology issued a public notice for the project on April 27, 2021.

The proposed project entails replacing an undersized culvert, making local road improvements, and developing approximately 45 new single-family homes. An undersized culvert conveys Newport Hills Creek under SE May Creek Park Dr and will be replaced with a culvert designed in accordance with the Washington Department of Fish and Wildlife's Water Crossing Design Guidelines (2013). The project will also redevelop 5 parcels, creating a denser single-family residential development. To connect the new development to SE May Creek Park Drive and address anticipated increases in local traffic, SE 84th Pl will be extended to SE May Creek Park Drive where a roundabout will be constructed. This will result in 0.045 acres of direct impact and 0.26 acres of indirect impact to a Category II wetland associated with Newport Hills Creek. The wetland impacts described above will be mitigated through purchasing In-Lieu Fee credits from King County's Mitigation Reserves Program.

The project area is located in Newcastle, Washington. Specifically, the project area consists of a group of five parcels found in the NW ¼ of Section 33, Township 24.N, Range 5.E, within Water Resource Inventory Area (WRIA) 8 (Cedar-Sammamish).

## **AUTHORITIES**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed the WQC request pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§1311, 1312, 1313, 1316, and 1317;
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws;
3. Conformance with the provision of using all known, available, and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010; and,
4. Conformance with Washington's prohibition on discharges that cause or tend to cause pollution of waters of the state of Washington. RCW 90.48.080.

With this Water Quality Certification (WQC) Order, Ecology is granting with conditions, the Corps request for a Section 401 Water Quality Certification for the Newport Hills Creek Culvert Replacement and Road Improvements (May Creek Assemblage Project), Newport Hills Creek and associated wetland, located in Newcastle, King County. Ecology has determined that the proposed discharges will comply with all applicable state water quality requirements, provided the project is conducted in accordance with the Section 401 Water Quality Certification request that Ecology received on April 12, 2021, additional information received on April 23, 2021, the supporting documents referenced in Table 1 below, **and the conditions of this WQC Order.**

Table 1. Supporting Documents

Date Received	Document Type	Title & Date	Author
January 20, 2021	Wetland Delineation	Newcastle Ridge Wetland Delineation Report (dated June 14, 2019, revised July 8, 2020)	The Watershed Company
March 23, 2021	Project Drawings	Sheets 1 of 20 to 20 of 20, Sheets SC1 and SC2 (dated January 19, 2021)	D.R. Strong Consulting Engineers
March 23, 2021	Impact and Mitigation Plans	Sheets W1 of W8 to W8 of W8 (dated February 18, 2021)	The Watershed Company
April 12, 2021	Joint Aquatic Resources Permit Application (JARPA) Form	Joint Aquatic Resources Permit Application Form (date signed April 12, 2021)	The Watershed Company

May 19, 2021	Water Quality Monitoring Plan	Water Quality Monitoring Plan for Newport Hills Creek Culvert Replacement and Road Improvements (dated April 23, 2021, updated version received May 19, 2021)	D.R Strong Consulting Engineers
May 21, 2021	In Lieu Fee Use Plan	In Lieu Fee Use Plan – May Creek Park Assemblage (dated February 23, 2021, revised May 21, 2021)	The Watershed Company
June 3, 2021	Hydraulic Project Approval	Hydraulic Project Approval for Newport Hills Creek Culvert Replacement and Road Improvements (issued October 19, 2020, expires October 18, 2025)	Washington Department of Fish and Wildlife

Issuance of this Section 401 Water Quality Certification for this proposal does not authorize ACH Homes, LLC to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this WQC absolves ACH Homes, LLC from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

#### **A. General Conditions**

Clean Water Act (CWA) Section 401 certification is granted with conditions to ACH Homes, LLC. Ecology has determined that any discharge from the proposed project will comply with water quality requirements, as defined by 40 CFR 121.1(n), subject to the following conditions pursuant to Section 33 USC §1341(d). Additionally, the following conditions will be incorporated into the Corps permit and strictly adhered to by ACH Homes, LLC. This Water Quality Certification (WQC) Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this WQC Order.

Specific condition justifications and citations required by 40 CFR 121.7(d)(1) are provided below each condition in *italic text*.

1. In this WQC Order, the term “Project Proponent” shall mean ACH Homes, LLC and its agents, assignees, and contractors.

- *Justification – Ecology needs to identify that conditions of this WQC Order apply to anyone conducting work on behalf of the Project Proponent to ensure compliance with the water quality standards and other applicable state laws.*
  - *Citation – 40 CFR 121.1(j), Chapter 90.48 RCW, Chapter 90.48.080 RCW, Chapter 90.48.120 RCW, Chapter 90.48.260 RCW, Chapter 173-200 WAC, Chapter 173-201A WAC, and Chapter 173-225-010 WAC.*
2. All submittals required by this WQC Order shall be sent to Ecology's Federal Permit Manager, via e-mail to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to [neil.molstad@ecy.wa.gov](mailto:neil.molstad@ecy.wa.gov). The submittals shall be identified with Order # 20094 and include the Project Proponent's name, Corps permit number, project name, project contact, and the contact phone number.
- *Justification – Ecology needs to identify where information and submittals are to be submitted to be in compliance with the requirements of this WQC Order.*
  - *Citation – 40 CFR 121, Chapter 90.48 RCW, Chapter 90.48.120 RCW, Chapter 90.48.260 RCW, Chapter 173-201A WAC, and Chapter 173-225-010 WAC.*
3. Work authorized by this WQC Order is limited to the work described in the WQC request package received by Ecology on April 12, 2021, additional information received on April 23, 2021 and the supporting documentation identified in Table 1 above.
- *Justification – Ecology has the authority to prevent and control pollution of state waters. By authorizing a discharge into a water of the state, through a WQC, Ecology is certifying the project as proposed will not negatively impact our state's water quality. Therefore, it is imperative the project is conducted as it was presented during the review process. Any deviations from information within the WQC Request package and this WQC Order must be disclosed prior to the initiation of the planned work.*
  - *Citation – 40 CFR 121, Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.120 RCW, Chapter 90.48.260 RCW, Chapter 173-200 WAC, Chapter 173-201A WAC, Chapter 173-204 WAC, and Chapter 173-225-010 WAC.*
4. The Project Proponent shall send (per condition A.2 above) a copy of the final Corps permit to Ecology's Federal Permit Manager within two weeks of receiving it.
- *Justification - This condition is needed to verify that the Corps completed the permit process and an authorization has been issued. Additionally, it allows Ecology to ensure that all of the conditions of this WQC Order have been incorporated into the Corps Permit to protect water quality.*
  - *Citation – 40 CFR 121.10, Chapter 90.48 RCW, Chapter 90.48.260 and Chapter 173-201A.*
5. The Project Proponent shall keep copies of this WQC Order on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.

- *Justification – All parties (including on-site contractors) must be aware of and comply with the WQC Order for the protection of water quality.*
  - *Citation – 40 CFR 121.3, Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 173-201A WAC, and Chapter 173-225-010 WAC.*
6. The Project Proponent shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, and/or necessary data collection, to ensure that conditions of this Order are being met.
- *Justification – Ecology must be able to investigate and inspect construction sites and facilities for compliance with all state rules and laws.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.090 RCW, Chapter 173-201A WAC, and Chapter 173-225-010 WAC.*
7. The Project Proponent shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Project Proponent shall provide Ecology a signed statement (see Attachment A for an example) before construction begins.
- *Justification – Ecology needs to ensure that anyone conducting work at the project, on behalf of the Project Proponent, are aware of and understand the required conditions of this WQC Order to ensure compliance with the water quality standards and other applicable state laws.*
  - *Citation – 40 CFR 121.1(j), Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 173-201A WAC, and Chapter 173-225-010 WAC.*
8. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
- *Justification – Ecology has the authority to prevent and control pollution of state waters, and to protect designated uses. By authorizing a discharge into a water of the state, through a water quality certification, we are certifying the project as proposed will not negatively impact our state's water quality and will comply with the state's water quality requirements. Therefore, it is imperative the project is conducted as it was presented during the review process, and as conditioned herein.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 173-201A WAC, Chapter 173-201A-300(2)(e)(i) WAC, Chapter 173-201A-310 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
9. Failure of any person or entity to comply with the WQC Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the state's water quality standards.
- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life*

*and beneficial uses; civil penalties and other enforcement actions are the primary means of securing compliance with water quality requirements.*

- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.037 RCW, Chapter 90.48.080 RCW, Chapter 90.48.120 RCW, Chapter 90.48.142 RCW, Chapter 90.48.144 RCW, and Chapter 173-225-010 WAC.*

## **B. Notification Requirements**

1. The following notification shall be made via phone or e-mail (e-mail is preferred) to Ecology's Federal Permit Manager via e-mail to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to [neil.molstad@ecy.wa.gov](mailto:neil.molstad@ecy.wa.gov). Notifications shall be identified with Order # 20094 and include the Project Proponent name, project name, project location, project contact and the contact phone number.
  - a. Immediately following a violation of state water quality standards or when the project is out of compliance with any conditions of this Order.
  - b. At least ten (10) days prior to all pre-construction meetings
  - c. At least ten (10) days prior to conducting initial in-water work activities.
  - d. At least seven (7) days prior to the start of impacts to wetlands.
  - e. Within seven (7) days of completing in-water work activities.
  - *Justification – Ecology must be aware of when a project starts and ends and whether there are any issues. This allows Ecology to evaluate compliance with the state water quality requirements.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204 WAC, and Chapter 173-225-010 WAC.*
2. In addition to the phone or e-mail notification required under B.1.a. above, the Project Proponent shall submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
  - *Justification – Ensure the Project Proponent remains in full compliance with state water quality requirements for the duration of the project.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.120 RCW, Chapter 173-201A WAC, and Chapter 173-225-010 WAC.*
3. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A.2 a written construction status report and submit status reports every 12 months until construction is completed.



- *Justification – Ecology must be aware of when a project starts and ends and whether there are any issues. This allows Ecology to evaluate compliance with the state water quality requirements.*
- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204 WAC, and Chapter 173-225-010 WAC.*

### **C. Timing**

1. This Order is not effective until the U.S. Army Corps of Engineers (Corps) issues a permit for this project and will expire five (5) years from the date of issuance of the Corps permit.
  - *Justification – Certifications are required for any license or permit that authorizes an activity that may result in a discharge. Ecology needs to be able to specify how long the WQC Order will be in effect.*
  - *Citation – 40 CFR 121 and Chapter 173-225-010 WAC.*
2. The following in-water work window applies to the project:

All activities within the wetted perimeter of Newport Hills Creek shall be conducted between June 16 and September 30 of any year.

- *Justification – This condition is reaffirming the project will take place during a time period that will not harm fish or other aquatic species.*
- *Citation – Chapter 77.55 RCW, Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300 WAC, Chapter 173-201A-330 WAC, Chapter 173-225-010 WAC, and Chapter 220-660 WAC.*

### **D. Water Quality Monitoring & Criteria**

1. Newport Hills Creek is categorized under the Water Quality Standards For Surface Waters of the State of Washington as Core Summer Salmonid Habitat, and the criteria of the categorization apply as described in Chapter 173-201A-200(1)(e)(i) WAC.
  - *Justification – This condition provides citation to the appropriate water quality standard criteria to protect surface waters of the state. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
2. This Order does not authorize the Project Proponent to exceed applicable turbidity standards beyond the limits established in WAC 173-201A-200(1)(e)(i).

- *Justification – This condition provides citation to the appropriate water quality standard criteria to protect surface waters of the state. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
3. The Project Proponent shall conduct water quality monitoring as described in the approved *Water Quality Monitoring Plan for Newport Hills Creek Culvert Replacement and Road Improvements* (hereafter referred to as the WQMP), prepared by D.R. Strong Consulting Engineers, dated April 23, 2021, updated version received May 19, 2021.
- *Justification – This condition is necessary to ensure that the monitoring as proposed by the Project Proponent and authorized by Ecology is conducted to protect water quality. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
4. Monitoring results shall be submitted monthly to Ecology’s Federal Permit Manager, per condition A2.
- *Justification – This information is necessary for Ecology to determine if the project was implemented as approved by the WQC Order and that no adverse impacts to water quality or beneficial uses occurred.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
5. Visible turbidity anywhere beyond the temporary area of mixing (point of compliance) from the activity shall be considered an exceedance of the standard.
- *Justification – This condition specifically informs the Project Proponent of when they would be out of compliance with the water quality standards and an obvious sign of water quality degradation. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
6. If water quality exceedances for turbidity are observed outside the point of compliance, the Project Proponent or the contractor shall assess the cause of the water quality problem

and take immediate action to modify or stop, contain, and correct the problem and prevent further water quality turbidity exceedances.

- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution and know if there are exceedances of the water quality standards that protect aquatic life and beneficial uses.*
- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

## **E. Construction**

### General Conditions

1. All work in and near waters of the state shall be conducted to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMPs) suitable to prevent exceedances of state water quality standards shall be in place before starting maintenance and shall be maintained throughout the duration of the activity.
  - *Justification – Disturbed areas without appropriate BMP's and construction methods can discharge excess sediment to waters of the state and degrade water quality. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
2. All clearing limits, stockpiles, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities and maintained until all work is completed for each project.
  - *Justification – Ensures that the project proponent preserves sensitive areas from discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
3. No stockpiling or staging of materials shall occur at or below the OHWM of any waterbody.
  - *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

4. The Project Proponent shall comply with the Construction Stormwater Permit (National Pollutant Discharge Elimination System – NPDES) issued by Ecology for this project.
  - *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – 40 CFR 121 & 123, Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
5. Within the project limits<sup>1</sup> all environmentally sensitive areas including, but not limited to, wetlands, wetland buffers, and mitigation areas shall be fenced with high visibility construction (HVF) prior to commencing construction activities. Construction activities include equipment staging, materials storage, and work vehicle parking. *Note: This condition does not apply to activities such as pre-construction surveying and installing HVF and construction zone signage.*
  - a. If the project will be constructed in stages<sup>2</sup> a detailed description and drawings of the stages shall be sent to Ecology for review at least 20 days prior to placing HVF.
  - b. Condition 2.a. shall apply to each stage.

All field staff shall be trained to recognize HVF, understand its purpose and properly install it in the appropriate locations. HVF shall be maintained until all work is completed for each project or each stage of a staged project.

    - *Justification – Ecology must be assured that the Project Proponent has marked the sensitive areas that are not to be impacted to ensure that they are not damaged from any discharges or potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
    - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
6. All clearing limits, stockpiles, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities and maintained until all work is completed for each project.

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<sup>1</sup> Project limits include mitigation sites, staging areas, borrow sources, and other sites developed or used to support project construction.

<sup>2</sup> A stage is part of a project that has been separated into at least two distinct areas to be built during separate timeframes.

- *Justification – Ensures that the project proponent preserves sensitive areas from discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
7. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
- *Justification – Concrete, petroleum products or other waste materials are detrimental to water quality. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
8. All construction debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
- *Justification – Ecology must be assured that the Project Proponent is managing and disposing of material to protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
9. Turbid de-watering water associated with in-water work shall not be discharged directly to waters of the state, including wetlands. Turbid de-watering water shall be routed to an upland area for on-site or off-site settling.
- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses. Turbid water is such a discharge.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

#### Equipment & Maintenance

10. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state including wetlands.

- *Justification – Requiring a minimum setback ensures that material will not end up in waters of the state. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
11. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its use around waters of the state, including wetlands.
- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC.*
12. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
13. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
14. Wash water containing oils, grease, or other hazardous materials resulting from washing of equipment or working areas shall not be discharged into state waters. The Project Proponent shall set up a designated area for washing down equipment.

- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
15. A separate area shall be set aside, which does not have any possibility of draining to surface waters, for the wash-out of concrete delivery trucks, pumping equipment, and tools.
- *Justification – Concrete, petroleum products or other waste materials are detrimental to water quality. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

#### Culvert Work & Stream Bypass

16. All culvert work shall be conducted in the dry or in isolation from stream flow.
- *Justification – This condition would limit re-suspension of sediment that could cause water quality exceedances. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
17. Stream flow isolation work shall not scour the stream channel or banks of the waterbody in which the work is being done.
- *Justification – Scour and erosion could cause long term instability of the project and contribute to water quality impacts. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
18. To minimize sediment releases into downstream water, water reintroduced to the channel shall be done gradually and at a rate not exceeding the normal stream flow.
- *Justification – Maintaining natural stream flow rate is important for maintaining beneficial uses and preventing water quality impacts. Ecology must protect*

*waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*

- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

19. Culverts shall be installed to avoid inlet scouring and prevent downstream bank erosion.

- *Justification – Scour and erosion could cause long term instability of the project and contribute to water quality impacts. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

20. Fill associated with culvert installation shall be protected from erosion to the 100-year peak flow.

- *Justification – Erosion could cause long term instability of the project and contribute to water quality impacts. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

## **F. Wetlands**

1. The Project Proponent shall mitigate wetland impacts as described in the *In Lieu Fee Use Plan – May Creek Park Assemblage* (dated February 23, 2021, revised May 21, 2021) (hereafter called the “Mitigation Plan”) prepared by The Watershed Company.

- *Justification - Alteration of water quality necessitates the use of mitigation as a method of controlling pollution. When mitigation is provided, the impacts are not considered significant enough to water quality, at least in the long-term. The water quality standards, along with mitigation, protect wetlands as well as permitting some level of degradation where unavoidable or necessary.*
- *Citation - WAC 173-201A-300, Chapter [90.48](#) RCW, Chapter [90.54](#) RCW, Water Resources Act of 1971, and 40 C.F.R. 131.12. WAC 173-201A-260 (3)(i-ii). Chapter 90.74 RCW*

2. The Project Proponent shall obtain a Statement of Sale from the Sponsor as documentation of purchase of 8.14 in lieu fee credits for this impact project (see A.2).



The Project Proponent shall submit a copy of the Statement of Sale to Ecology (see A.2) before impacting wetlands.

Documentation from the Sponsor shall include:

- a. Ecology's Order number,
- b. Order issuance date,
- c. Description of mitigation credits purchased,
- d. Signatures from the Sponsor and the Project Proponent.

- *Justification - When mitigation is provided, the water quality impacts are offset and not considered significant, at least in the long-term. The water quality standards, along with mitigation, protect wetlands as well as permitting some level of degradation where unavoidable or necessary.*
- *Citation - WAC 173-201A-300, Chapter 90.48 RCW, Chapter 90.54 RCW, Water Resources Act of 1971, and 40 C.F.R. 131.12. WAC 173-201A-260 (3)(i-ii). Chapter 90.74 RCW*

3. The Project Proponent shall notify and submit in writing to Ecology (see A.2) any proposed changes to the amount of wetland impacts, revision to the mitigation plan, and/or submittal of new information (See F.2).

- *Justification - When mitigation is provided, the water quality impacts are offset and not considered significant, at least in the long-term. The water quality standards, along with mitigation, protect wetlands as well as permitting some level of degradation where unavoidable or necessary.*
- *Citation - WAC 173-201A-300, Chapter 90.48 RCW, Chapter 90.54 RCW, Water Resources Act of 1971, and 40 C.F.R. 131.12. WAC 173-201A-260 (3)(i-ii). Chapter 90.74 RCW*

4. The Project Proponent shall complete the purchase of credits before the impacts to wetlands occur.

- *Justification - When mitigation is provided, the impacts are not considered significant enough to water quality, at least in the long-term. The water quality standards, along with mitigation, protect wetlands as well as permitting some level of degradation where unavoidable or necessary. Mitigation that is not emplaced concurrent with impacts will result in degradation of existing beneficial uses of the wetlands affected by the proposed action.*
- *Citation - WAC 173-201A-300, Chapter [90.48](#) RCW, Chapter [90.54](#) RCW, Water Resources Act of 1971, and 40 C.F.R. 131.12. WAC 173-201A-260 (3)(i-ii). Chapter 90.74 RCW*

5. If the Project Proponent has not purchased credits or completed the Newport Hills Creek Culvert Replacement and Road Improvements (May Creek Assemblage Project) within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of the following:

- a) Newport Hills Creek Culvert Replacement and Road Improvements (May Creek Assemblage Project) and

- b) When in lieu fee credits will be purchased.

With the:

- c) Reason for the delay and
- d) Expected date of completion

- *Justification - When mitigation is provided, the impacts are not considered significant enough to water quality, at least in the long-term. The water quality standards, along with mitigation, protect wetlands as well as permitting some level of degradation where unavoidable or necessary. Mitigation that is not emplaced concurrent with impacts will result in degradation of existing beneficial uses of the wetlands affected by the proposed action.*
- *Citation - WAC 173-201A-300, Chapter [90.48](#) RCW, Chapter [90.54](#) RCW, Water Resources Act of 1971, and 40 C.F.R. 131.12. WAC 173-201A-260 (3)(i-ii). Chapter 90.74 RCW*

- 6. The Applicant shall submit an updated written notification every 12 months thereafter until the Newport Hills Creek Culvert Replacement and Road Improvements (May Creek Assemblage Project) is complete and the required credits are purchased.

- *Justification - When mitigation is provided, the impacts are not considered significant enough to water quality, at least in the long-term. The water quality standards, along with mitigation, protect wetlands as well as permitting some level of degradation where unavoidable or necessary. Mitigation that is not emplaced concurrent with impacts will result in degradation of existing beneficial uses of the wetlands affected by the proposed action.*
- *Citation - WAC 173-201A-300, Chapter [90.48](#) RCW, Chapter [90.54](#) RCW, Water Resources Act of 1971, and 40 C.F.R. 131.12. WAC 173-201A-260 (3)(i-ii). Chapter 90.74 RCW*

## **G. Emergency/Contingency Measures**

- 1. The Project Proponent shall develop and implement a spill prevention and containment plan for this project.

- *Justification – Ecology must ensure that the Project Proponent has a plan to prevent pollution from entering waterways. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 173-303-145 WAC.*

2. The Project Proponent shall have adequate and appropriate spill cleanup material available on site at all times during construction.
  - *Justification – Ecology must have assurance that the Project Proponent has the material readily available in order to address any spills that might occur to protect waters of the state. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 173-303-145 WAC.*
3. The Project Proponent shall have adequate and appropriate spill response materials available on site to respond to any release of petroleum products or any other material into waters of the state.
  - *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 173-303-145 WAC.*
4. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
  - *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 173-303-145 WAC.*
5. Work causing distressed or dying fish and discharges of oil, fuel, or chemicals into state waters or onto land with a potential for entry into state waters is prohibited. If such work, conditions, or discharges occur, the Applicant shall notify Ecology's Federal Permit Manager per condition B.1. and immediately take the following actions:
  - a. Cease operations at the location of the non-compliance.
  - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and prevent further environmental damage.

- c. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
  - d. Immediately notify Ecology's Regional Spill Response Office and the Washington State Department of Fish & Wildlife with the nature and details of the problem, any actions taken to correct the problem, and any proposed changes in operation to prevent further problems.
  - e. Immediately notify the National Response Center at 1-800-424-8802, for actual spills to water only.
- *Justification – This condition is necessary to prevent oil and hazardous materials spills from causing environmental damage and to ensure compliance with water quality requirements. The sooner a spill is reported, the quicker it can be addressed, resulting in less harm. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 173-303-145 WAC.*
6. Notify Ecology's Regional Spill Response Office immediately if chemical containers (e.g. drums) are discovered on-site or any conditions present indicating disposal or burial of chemicals on-site that may impact surface water or ground water.
- *Justification – Oil and hazardous materials spills cause environmental damage. The sooner a spill is reported, the quicker it can be addressed, resulting in less harm. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
  - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 173-303-145 WAC.*

## **YOUR RIGHT TO APPEAL**

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

#### ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

#### CONTACT INFORMATION

Please direct all questions about this Order to:

Neil Molstad  
Department of Ecology  
Northwest Regional Office  
(425) 389-5549  
[neil.molstad@ecy.wa.gov](mailto:neil.molstad@ecy.wa.gov)

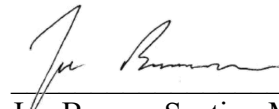
#### MORE INFORMATION

- **Pollution Control Hearings Board Website**  
<http://www.eluho.wa.gov/Board/PCHB>
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**  
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**  
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**  
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>

- **Chapter 90.48 RCW – Water Pollution Control**  
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173.204 WAC – Sediment Management Standards**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>
- **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>
- **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

**SIGNATURE**

Dated this 21<sup>st</sup> day of June 2021, at the Department of Ecology, Shoreline, Washington.



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Joe Burcar, Section Manager  
Shorelands and Environmental Assistance Program  
Northwest Regional Office

**Attachment A**  
**Statement of Understanding**  
**Water Quality Certification Conditions**

Newport Hills Creek Culvert Replacement and Road Improvements (May Creek Assemblage Project)

ACH Homes, LLC

Water Quality Certification Order No. **20094**

and

Corps Reference No. **NWS-2020-0705**

I, \_\_\_\_\_, state that I will be involved as an agent or contractor for ACH Homes, LLC in the site preparation and/or construction of the Newport Hills Creek Culvert Replacement and Road Improvements (May Creek Assemblage Project) located at Newcastle, King County, Washington. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order No. 20094 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

I have and will continue to ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand the conditions of this Order and any permits, plans, documents, and approvals referenced in the Order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Company