



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

*Northwest Regional Office • PO Box 330316 • Shoreline, Washington 98133-9716 • (206) 594-0000
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December 7, 2021

KB Home
Attn: Pete Nichols
320 120th Ave. NE Suite 202
Bellevue, WA 98005

Re: Administrative Order No. 20889 to permanently fill/impact 0.43 acres of non-federally regulated wetlands to construct The Retreat residential development in the City of Marysville, Snohomish County, Washington

Dear Pete Nichols:

The Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application (JARPA) on September 7, 2021, requesting an Administrative Order for proposed work in non-federally regulated wetlands. Ecology has determined that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Chapter 90.48 RCW and other applicable requirements of state law.

This approval is subject to the conditions contained in the enclosed Order. **You must familiarize yourself with and abide by the conditions in the Order, including all notification requirements.** If you have any questions, please contact Neil Molstad at (425) 389-5549 or Neil.Molstad@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

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

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

Enclosure

Sent via email to pfnichols@kbhome.com

cc: Amanda Nadjkovic, U.S. Army Corps of Engineers
Chris Holland, City of Marysville
Jon Pickett, Soundview Consultants LLC
ECYREFEDPERMITS@ECY.WA.GOV

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF THE REQUEST BY) ORDER No. 20889
KB Home)
FOR AN ADMINISTRATIVE ORDER TO) Corps Ref. No. #NWS-2021-455
CONDUCT WORK IN NON-FEDERALLY)
REGULATED WETLANDS)

TO: KB Home
Attn: Pete Nichols
320 120th Ave. NE Suite 202
Bellevue, WA 98005

This is an Administrative Order requiring KB Home to comply with Chapter 90.48 RCW and the rules and regulations of the Department of Ecology (Ecology) by taking certain actions which are described below. RCW 90.48.120(1) authorizes Ecology to issue Administrative Orders requiring compliance whenever it determines that a person has violated or creates a substantial potential to violate any provision of Chapter 90.48 RCW.

On September 7, 2021, Ecology received a Joint Aquatic Resources Permit Application (JARPA) requesting an Administrative Order to impact 0.43 acres of non-federally regulated wetlands to construct The Retreat Planned Residential Development project in the City of Marysville, Snohomish County. The U.S. Army Corps of Engineers (Corps) issued a jurisdictional determination for the project area on August 24, 2021, concluding that none of the wetlands on site are federally regulated. The project area is an assemblage of 10 parcels (Street addresses 4829, 4927, 5003, 5009, 5127, and 5205 87th Ave NE) located in the SW ¼ of Section 36, T30N, R05E, City of Marysville, Snohomish County, WRIA 7 (Snohomish).

This Administrative Order authorizes 0.43 acres of Category IV wetland impacts at the project location. Mitigation for these impacts will consist of the purchase of 0.36 acre-credits from the Snohomish Basin Mitigation Bank, as described in the *Bank Use Plan for The Retreat Planned Residential Development* dated June 8, 2021.

For purposes of this Order, the term “Applicant” shall mean KB Home and its agents, assigns, and contractors.

In view of the foregoing and in accordance with RCW 90.48.120(1):

IT IS ORDERED that the Applicant shall comply with the following:

A. General Conditions:

1. The Applicant shall construct and operate the project in a manner consistent with the project description contained in the JARPA received by Ecology on September 7, 2021, or as otherwise approved by Ecology.
2. For purposes of this Order, all submittals required by its conditions shall be sent to fednotification@ecy.wa.gov and cc to neil.molstad@ecy.wa.gov. Any submittals shall reference Order No. 20889.
3. The Applicant shall provide access to the project site upon request by Ecology.
4. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and forepersons, and state and local government inspectors.
5. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
6. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order.

B. Notification Requirements:

1. The Applicant shall provide written notification to Ecology in accordance with condition A.2. for the following activities:
 - a. At least seven (7) days prior to conducting work activities in wetlands.
 - b. Immediately following a violation of the state water quality standards or any condition of this Order.
 - c. Within seven (7) days of completing work activities in wetlands.

C. Wetland Mitigation Conditions:

1. The Applicant shall mitigate wetland impacts as described in the *Bank Use Plan for the Retreat Planned Residential Development* (hereafter called the "mitigation plan")

prepared by Soundview Consultants, dated June 8, 2021, or as revised and approved by Ecology.

2. The Applicant shall notify and submit in writing to Ecology (see A.2) any proposed changes to the amount of wetland impacts or revisions to the mitigation plan before implementing the changes.
3. Prior to impacting wetlands, the Applicant shall submit to Ecology documentation from the bank sponsor verifying the purchase of 0.36 mitigation bank credits (credits) from the Snohomish Basin Mitigation Bank. This documentation must include the Ecology Order number, Order issuance date, impact acreage, the amount of credits required by the Order, and date of credit purchase.
4. The Applicant shall complete the purchase of credits before the impacts to wetlands occur, or Ecology may require additional compensation to account for temporal loss of wetland functions.
5. If the Applicant has not purchased credits within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of:
 - a) The work activities in wetlands at The Retreat Planned Residential Development project
 - b) When bank credits will be purchased

With the:

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

The Applicant shall submit an updated written notification every 12 months thereafter until the wetland impacts at The Retreat Planned Residential Development project are complete and the required credits are purchased.

6. Until the Applicant has received written notice from Ecology that the Mitigation Plan has been fully implemented, the Applicant's obligation under Condition C.1 to mitigate for wetland impacts is not met.

D. Timing

1. This Order will expire when all its conditions have been met and upon receipt of a mitigation closeout letter from Ecology.

Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

Your right to appeal

You have a right to appeal this Order to the Pollution Control Hearings 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 all 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.

Filing an appeal with the PCHB:

Mailing Address:

Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

Street Address:

Pollution Control Hearings Board
1111 Israel RD SW
STE 301
Tumwater, WA 98501

Serving a copy of the appeal on Ecology:

Mailing Address:

Department of Ecology
Attn: Appeals Processing Desk
PO Box 47608
Olympia, WA 98504-7608

Street Address:

Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

Contact Information

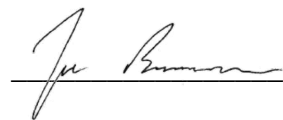
Please direct all questions about this Order to:

Neil Molstad
Department of Ecology
Northwest Regional Office
PO Box 330316 Shoreline, WA 98133-9716
(425) 389-5549
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 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

DATED December 7, 2021, at Shoreline, Washington.



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