May 10, 2022

Connie Emerson
9805 NE 116th St, #7484
Kirkland, WA 98034

Re: Water Quality Certification Order No. 21093 for Corps Reference No. NWS-2021-0992, Emerson Short Plat Project, City of Kirkland, King County, Washington

Dear Connie Emerson:

On November 26, 2021, PACE Engineers, on behalf of Connie Emerson, submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Emerson Short Plat Project in the City of Kirkland, King County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the Water Quality Certification Request and supplemental 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 certification is subject to the conditions contained in the enclosed Water Quality Certification Order (WQC Order).

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

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

Sincerely,

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

Sent via email: emersonconnie@icloud.com
E-cc: Eilean Davis, PACE Engineers
      Colleen Anderson, U.S. Army Corps of Engineers
      Martin Fox, Muckleshoot Tribe
      Rebekah Padgett, Department of Ecology
      Loree’ Randall, Department of Ecology
      ECYREFEDPERMITS@ecy.wa.gov – Aquatics No. 141237
IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO
Connie Emerson pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC

ORDER No. 21093
Corps Reference No. NWS-2021-0992
Emerson Short Plat Project, Impacts to a Wetland located in the East Lake Washington Watershed, City of Kirkland, King County, Washington

Connie Emerson
9805 NE 116th Street, #7484
Kirkland, WA 98034

On November 26, 2021, PACE Engineers, on behalf of Connie Emerson (the Project Proponent), submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Emerson Short Plat Project, City of Kirkland, King County, Washington. The following required processing dates are referenced below:

- On November 23, 2021, the U.S. Army Corps of Engineers (Corps) notified the Washington State Department of Ecology (Ecology) that they are reviewing the project for authorization under Nationwide Permit No. 29, which requires an individual WQC from Ecology.
- On December 21, 2021, Ecology issued a public notice for the project.

This project proposes to divide an existing parcel into three smaller parcels and construct two residences on each of the two new parcels created by the division. The proposed project will result in impacts to 0.016 acres of Category IV wetland.

The project site is located at 12522 Holmes Point Drive NE, within the East Lake Washington Watershed, City of Kirkland, King County, Washington, Section 26, Township 26 N., Range 04 E., within Water Resource Inventory Area (WRIA) 8 (Cedar/Sammamish).

With this Order, Ecology is granting Connie Emerson’s request for a Section 401 Water Quality Certification for the Emerson Short Plat Project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on November 26, 2021, and the supporting documentation described in the Special Conditions section below.

Based on the information submitted, Ecology has determined that the discharge from the project will comply with state water quality requirements. Prior to undertaking any changes that materially alter the project, the Project Proponent must contact Ecology to determine whether a new Section 401 Water Quality Certification is required.

Issuance of this Section 401 Water Quality Certification for this proposal does not authorize the Project Proponent 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 Section 401 Water Quality Certification...
absolves Connie Emerson from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

**Special Conditions: Wetland Compensatory Mitigation**

1. The Project Proponent shall mitigate wetland impacts as described in the *Emerson Short Plat Project Bank Use Plan* (hereafter called the “Mitigation Plan”) dated March 18, 2022 and submitted to Ecology on March 21, 2022.

   - **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** – 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A-260 (3)(i-ii) WAC, Chapter 173-201A-300 WAC, and Chapter 173-225-010 WAC.

2. The Project Proponent shall submit any proposed changes to the Mitigation Plan in writing to Ecology for review before implementing the changes.

   - **Justification** – When mitigation is provided, the water quality impacts are offset and not considered significant, at least in the long-term. Changes to impacts or mitigation must be considered when evaluating mitigation adequacy.

   - **Citation** – 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A-260 (3)(i-ii) WAC, Chapter WAC 173-201A-300 WAC, and Chapter 173-225-010 WAC.

3. Prior to impacting wetlands, the Project Proponent shall submit to Ecology documentation from the bank sponsor verifying the purchase of 0.014 wetland mitigation bank credits (credits) from the Keller Farm 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.

   - **Justification** - This condition is necessary to ensure the compensatory mitigation was actually provided by the bank.

   - **Citation** – 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A-260 (3)(i-ii) WAC, Chapter 173-201A-300 WAC, and Chapter 173-225-010 WAC.
4. Unless otherwise authorized by this WQC Order, the Project Proponent shall complete the purchase of credits before impacting wetlands or Ecology could use its discretionary authority to require the Project Proponent to provide additional compensation to account for additional temporal loss of wetland functions.

- **Justification** - Mitigation that is not emplaced concurrent with impacts will result in degradation of existing beneficial uses of the wetlands affected by the proposed action through temporal loss of functions.

- **Citation** – 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A-260 (3)(i-ii) WAC, Chapter 173-201A-300 WAC, and Chapter 173-225-010 WAC.

5. If the Project Proponent has not purchased credits or completed the Emerson Short Plat project within 13 months of the date of this Order, the Project Proponent shall inform Ecology, in writing, of the status of:

   a) The Emerson Short Plat Project
   b) When bank credits will be purchased

   With the:

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

   The Project Proponent shall submit an updated written notification every 12 months thereafter until the Emerson Short Plat Project is complete and the required credits are purchased.

- **Justification** - Mitigation that is not emplaced concurrent with impacts will result in degradation of existing beneficial uses of the wetlands affected by the proposed action through temporal loss of functions.

- **Citation** – 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A-260 (3)(i-ii), Chapter 173-201A-300 WAC, and Chapter 173-225-010 WAC.

In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, this WQC is granted to Connie Emerson for the Emerson Short Plat Project.

This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues a Department of the Army (DA) permit for this project. Order No. 21093 will remain valid for
the duration of the associated DA permit. Connie Emerson or their project representative should send a copy of the final DA permit to fednotification@ecy.wa.gov within two weeks of receiving it.

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.

Address and location information

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
PO Box 330316
Shoreline, WA 98133-9716
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

- 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

- Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington

- 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

_________________________________________  5/10/2022
Joe Burcar, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology – Northwest Regional Office