



STATE OF WASHINGTON  
**DEPARTMENT OF ECOLOGY**

Northwest Regional Office  
PO Box 330316, Shoreline, WA 98133-9716 • 206-594-0000

April 20, 2023

Greenbriar Construction Corp  
ATTN: Dave Edelstein  
2200 Division Street #E  
Bellingham, WA 98229

Re: Water Quality Certification Order No. **21681** for Corps Reference No. **NWS-2020-343**,  
Park Slope residential development, Whatcom County, Washington

Dear Dave Edelstein:

On June 10, 2022, Greenbriar Construction Corp submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Park Slope project, Whatcom 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 Chris Luerkens at (360) 410-4807 or [Chris.Luerkens@ecy.wa.gov](mailto:Chris.Luerkens@ecy.wa.gov). The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

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

WQC Order No. 21618, Corps No. NWS-2020-343  
Aquatics No. 138860  
April 20, 2023  
Page 2 of 2

Enclosure (1)

By certified mail: 9171 9690 0935 0233 1189 20

Sent via e-mail: [info@greenbriarhomes.net](mailto:info@greenbriarhomes.net)

E-cc: Ali Taysi, ATV Consulting LLC  
Randel Perry, U.S. Army Corps of Engineers  
Kristin Murray, U.S. Army Corps of Engineers  
Steve Sundin, City of Bellingham  
Loree' Randall, Department of Ecology  
Chris Luerkens, Department of Ecology  
[ECYREFEDPERMITS@ecy.wa.gov](mailto:ECYREFEDPERMITS@ecy.wa.gov)

<b>IN THE MATTER OF GRANTING A</b>	)	<b>WQC ORDER No. 21681</b>
<b>WATER QUALITY CERTIFICATION TO</b>	)	<b>Corps Reference No. NWS-2020-343</b>
Greenbriar Construction Corp	)	Park Slope project located within wetlands,
pursuant to 33 U.S.C. 1341 (FWPCA §	)	Bellingham or near, Whatcom County,
401), RCW 90.48.120, RCW 90.48.260 and	)	Washington
Chapter 173-201A WAC	)	

Greenbriar Construction Corp  
ATTN: Dave Edelstein  
2200 Division Street #E  
Bellingham, WA 98229

On June 10, 2022, Greenbriar Construction Corp submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Park Slope project, Whatcom County, Washington. The following required processing dates are referenced below:

- On May 10, 2022, Greenbriar Construction Corp submitted a pre-filing meeting request.
- On May 11, 2022, the U.S. Army Corps of Engineers (Corps) sent an email notification to Ecology that they are reviewing the project for authorization under Nationwide Permit No. 29 and requires an individual Section 401.
- Within the June 13, 2020 email, the Corps also provided the “Reasonable Period of Time” (deadline) for the WQC of December 7, 2022.
- On June 28, 2022, Ecology issued a public notice for the project.
- On November 17, 2022, the U.S. Army Corps of Engineers (Corps) sent an email approving an extension to the reasonable period of time to April 7, 2023.
- On March 24, 2023, the U.S. Army Corps of Engineers (Corps) sent an email approving a second extension to the reasonable period of time to May 5, 2023.

This project proposes to subdivide and develop the property for residential uses including single-family residential lots, townhomes, stormwater improvements, and a new road. The proposal will fill approximately 0.13 acres of wetland, and indirectly impact approximately 0.05 acre of wetland. Compensatory mitigation for wetland impacts will occur onsite through wetland creation and enhancement, and wetland buffer enhancement.

The project site is located partially within wetlands located in the City of Bellingham, Whatcom County, Washington, Section 08, Township 38N., Range 3E., within Water Resource Inventory Area (WRIA) 1 Nooksack.

With this WQC Order, Ecology is granting Greenbriar Construction Corp’s request for a Section 401 Water Quality Certification for the Park Slope project, provided that the activity is

conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on June 10, 2022, and the following supporting documentation:

1. Second Revision - Mitigation Plan for Parkslope, prepared by Miller Environmental Services, LLC, dated March 22, 2023.

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, Greenbriar Construction Corp 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 Greenbriar Construction Corp 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 the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

**Special Conditions:**

1. All submittals required by this WQC Order shall be sent to Ecology's Headquarters Office, Attn: Federal Permit Manager, via e-mail to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to [chris.luerkens@ecy.wa.gov](mailto:chris.luerkens@ecy.wa.gov). The submittals shall be identified with WQC Order No. 21681 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 - Chapter 90.48 RCW, RCW 90.48.120, RCW 90.48.260, Chapter 173-201A WAC, and WAC 173-225-010.
2. Greenbriar Construction Corp 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 WQC 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, RCW 90.48.030, RCW 90.48.090, RCW 90.48.120, Chapter 173-201A WAC, and WAC 173-225-010.
3. Greenbriar Construction Corp shall mitigate wetland impacts as described in the Second Revision – Mitigation Plan For Park Slope Development (hereafter called the “Mitigation Plan”) prepared by Miller Environmental Services, LLC, and dated March 22, 2023, or as required by this WQC Order or revised and approved by Ecology.
- Justification - Alteration of water quality necessitates the use of mitigation as a method of controlling pollution. When adequate 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 WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300, and WAC 173-225-010.
4. Greenbriar Construction Corp shall have a qualified wetland professional at the wetland mitigation site to supervise during construction and planting.
- Justification - Mitigation success is critical to achieving control of pollution. Supervision of qualified professionals helps ensure success.
  - Citation - 40 CFR 131.12, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300, and WAC 173-225-010.
5. After completing construction and planting of the mitigation sites, Greenbriar Construction Corp shall submit to Ecology an as-built report, including plan sheets, documenting site conditions at Year Zero. The as-built report must be submitted within 90 days of completing construction and planting.
- Justification - This condition is necessary to ensure the mitigation site was constructed and planted per the approved mitigation plan and serves as a baseline for monitoring performance standards, which must be met to ensure success of the mitigation site.

- Citation - 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 WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300 and WAC 173-225-010.
6. Greenbriar Construction Corp shall submit to Ecology monitoring reports documenting mitigation site conditions for years 1, 2, 3, 5, 7, and 10. The monitoring reports must be submitted by December 31 following each monitoring year.
- Justification- Monitoring reports track the environmental progress of the mitigation site and are necessary to track environmental changes at mitigation sites to ensure success of the mitigation site.
  - Citation - 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 WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300 and WAC 173-225-010.

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. WQC Order No. **21681** will remain valid for the duration of the associated DA permit. Greenbriar Construction Corp should send a copy of the final DA permit to [fednotification@ecy.wa.gov](mailto: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 RCW 43.21B and WAC 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2). More information is available at <https://elaho.wa.gov/content/12>.

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

- File your notice of appeal and a copy of this Order with the PCHB (see filing options below). "Filing" means actual receipt by the PCHB during regular business hours as defined in WAC 371-08-305 and -335. "Notice of appeal" is defined in WAC 371-08-340.
- Serve a copy of your notice of appeal and this Order on the Department of 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 RCW 43.21B and WAC 371-08.

### **Filing an appeal with the PCHB:**

For the most current information regarding filing with the PCHB, visit:  
<https://elaho.wa.gov/content/12>

#### **Filing by mail**

##### **Mailing Address:**

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

#### **Filing electronically**

##### **Email address:**

[pchb-shbappeals@elaho.wa.gov](mailto:pchb-shbappeals@elaho.wa.gov)

#### **Filing in person (or by certified mail/courier)**

##### **Street Address:**

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

### **Serving a copy of the appeal on Ecology:**

Electronic copies of appeals are not accepted at the Department of Ecology per  
WAC 371-08-305(10).

#### **Filing by mail**

##### **Mailing Address:**

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

#### **Filing in person (or by certified mail/courier)**

##### **Street Address:**

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

### **Contact Information**

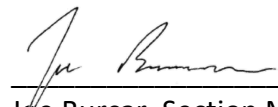
Please direct all questions about this WQC Order to:

Chris Luerkens  
Department of Ecology  
Bellingham Field Office  
913 Squalicum Way, Suite 101  
Bellingham, WA 98225  
[chris.luerkens@ecy.wa.gov](mailto:chris.luerkens@ecy.wa.gov)

#### More Information

- **Pollution Control Hearings Board Website**  
<http://www.eluho.wa.gov/content/11>
- **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



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

4/20/2023  
Date