



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

May 8, 2023

King Creek, LLC
ATTN: Paul Cullen
PO Box 82336
Kenmore, WA 98028

Re: Administrative Order No. **21594** to permanently impact 14,910 ft² of non-federally regulated wetlands, which are waters of the state, to construct Sunnyside Village Cohousing in Snohomish County, Washington

Dear Paul Cullen:

The Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application (JARPA) on December 6, 2022, requesting authorization for proposed work in non-federally regulated wetlands, which are waters of the state. 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 Doug Gresham at doug.gresham@ecy.wa.gov or (425) 429-1846. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

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

Enclosure (1)

King Creek, LLC

May 8, 2023

Page 2 of 2

By certified mail: 9171 9690 0233 1185 79

Sent via email to: paul.cullen@comcast.net

E-cc: Dean Smith, King Creek LLC
Emily Hurn, Geoengineers
Mae Ancheta, U.S. Army Corps of Engineers
Emily Morgan, City of Marysville
Doug Gresham, Department of Ecology
ECYREFEDPERMITS@ECY.WA.GOV

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF ISSUING AN) ORDER No. 21594
ADMINISTRATIVE ORDER TO) Corps Ref. No. NWS-2020-388
King Creek, LLC) Sunnyside Village Cohousing, Wetlands
pursuant to RCW 90.48.120 and WAC 173-201A) located in Snohomish County,
) Washington.

TO: King Creek, LLC
ATTN: Paul Cullen
PO Box 82336
Kenmore, WA 98028

This is an Administrative Order requiring King Creek, LLC 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(2) 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.

The Sunnyside Village Cohousing project will construct 32 cottages (16 two-bedroom and 16 three-bedroom), a common house, sidewalks/hardscape, parking stalls and access drive lanes, landscaping and community gardens, and new underground utility vaults. The U.S. Army Corps of Engineers (Corps) issued a jurisdictional determination on August 12, 2020, concluding that Wetlands A, B, and D are not waters of the U.S. On December 6, 2022, Ecology received a request to impact 14,910 ft² of non-federally regulated wetlands, which are waters of the state. The project is located at 3121 66th Avenue NE in Marysville, Section 3, Township 29 N., Range 5 E., Snohomish County, and WRIA 7-Snohomish.

This Administrative Order authorizes 14,910 ft² of wetland impacts at the project location. Offsite mitigation will compensate for the proposed impacts through the purchase of 0.29 credits from the Skykomish Habitat Mitigation Bank.

For purposes of this Order, the term "Project Proponent" shall mean King Creek, LLC and its agents, assigns, and contractors.

In view of the foregoing and in accordance with RCW 90.48.120(2):

IT IS ORDERED that the Project Proponent shall comply with the following:

A. General Conditions:

1. The Project Proponent shall construct and operate the project in a manner consistent with the project description contained in the JARPA received by Ecology on December 6, 2022, 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 a cc to doug.gresham@ecy.wa.gov. Any submittals shall reference Order No. 21594.
3. The Project Proponent 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 Project Proponent 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.
7. The Project Proponent shall obtain and comply with the conditions of the Construction Stormwater General Permit (National Pollutant Discharge Elimination System - NPDES) issued for this project.

B. Notification Requirements:

1. The Project Proponent shall provide written notification to Ecology in accordance with condition A.2 above for the following activities:
 - a. Immediately following a violation of the state water quality standards or when the project is out of compliance with any condition of this Order.

C. Wetland Mitigation Conditions:

1. The Project Proponent shall mitigate wetland impacts as described in the *Wetland Mitigation Bank Use Plan for Sunnyside Village Cohousing Project*, prepared by GeoEngineers, Inc. and dated August 22, 2022, (hereafter called the "Mitigation Plan") or as modified by this Order or revised and approved by Ecology.
2. The Project Proponent 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 A, B, and D, the Project Proponent shall submit to Ecology documentation from the bank sponsor verifying the purchase of 0.29 mitigation bank credits (credits) from the Skykomish Habitat 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 Project Proponent shall complete the purchase of credits before the impacts to Wetlands A, B, and D occurs, or Ecology may require additional compensation to account for temporal loss of wetland functions.
5. If the Project Proponent has not purchased credits within 13 months of the date of this Order, the Project Proponent shall inform Ecology, in writing, of the status of:

- a. Sunnyside Village Cohousing
- 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 Sunnyside Village Cohousing is complete and the required credits are purchased.

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

D. Timing

1. This Order is valid until the Project Proponent meets all its requirements and the Project Proponent has received written notification from Ecology to that effect.

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 RCW 43.21B and WAC 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 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/11>

Address and Location Information

Street Address:

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

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

Mailing Addresses:

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

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

E-Mail Address:

Department of Ecology
Not currently available (see WAC 371-08)

Pollution Control Hearings Board
Pchb-shbappeals@eluhwa.gov

Contact Information

Please direct all questions about this Order to:

Doug Gresham
Department of Ecology
Northwest Regional Office
(425) 429-1846
doug.gresham@ecy.wa.gov

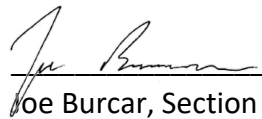
More Information

- **Pollution Control Hearings Board Website**
<https://eluhwa.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 173-201A 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 8th day of May 2023 at the Department of Ecology, Shoreline, Washington



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