

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

MOTION NO. 22-386

APPROVING AND AUTHORIZING THE COUNTY EXECUTIVE  
TO EXECUTE A CONSERVATION COVENANT

WHEREAS, in January 2022, the Snohomish County Council approved the construction of the Little Bear Creek Advance Mitigation Site (RC1730); and

WHEREAS, the Little Bear Creek Advance Mitigation Site will be used for critical area mitigation for County road projects; and

WHEREAS, in order for this project to receive permits for construction, a Critical Area Study was prepared for the Little Bear Creek Advance Mitigation Site dated August 2019; and

WHEREAS, the Critical Area Study called for the entire project site to be left permanently undisturbed in a substantially natural state per regulatory requirements; and

WHEREAS, the Conservation Covenant is required by Washington State Department of Ecology's Order #85631 and corrected Order #18224 approving use of the property for advance mitigation; and


WHEREAS, Parcels 270534-003-031-00; 270534-003-032-00; 270534-003-020-00; 270534-003-028-00 are to be protected in perpetuity; and


WHEREAS, in order to permanently protect these parcels used for advance mitigation, the Snohomish County Council must approve the recording of the Conservation Covenant with the Snohomish County Auditor.

NOW, THEREFORE, ON MOTION, the Snohomish County Council hereby authorizes the critical area protection on County property legally described in Auditor's File #201808315006 and illustrated in Exhibit A within the Conservation Covenant, as attached hereto and incorporated by reference herein, and authorizes the County Executive to execute the same.

PASSED this 28<sup>th</sup> day of September, 2022.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

  
\_\_\_\_\_  
Council Chair

ATTEST:  
  
\_\_\_\_\_  
Asst. Clerk of the Council

AFTER RECORDING RETURN TO  
Snohomish County Public Works  
3000 Rockefeller Ave M/S 607  
Everett, WA 98201

## CONSERVATION COVENANT

**Grantor:** Snohomish County, a political subdivision of the State of Washington

**Grantee:** Washington State Department of Ecology

**Brief Legal Description:** Ptn of NE ¼ and SE ¼ of SW ¼ of Sec 34, Twn 27N, Rng 5E, W.M. in Snohomish County, Washington (See Legal Description in Record of Survey #4777, Auditor's File #201808315006)

**Tax Parcel Nos.:** 270534-003-031-00; 270534-003-032-00; 270534-003-020-00; 270534-003-028-00

This Conservation Covenant (hereinafter "Covenant") is made by Snohomish County, having an address of 3000 Rockefeller Ave., M/S 607, Everett, WA 98201, (hereinafter "Grantor"), in favor of the Washington State Department of Ecology (hereinafter "Grantee"), (hereinafter, collectively, "the Parties").

### RECITALS

1. Grantor is the sole owner in fee simple of that certain real property, referred to as Little Bear Creek Advance Mitigation Site (LBCAMS), in Snohomish County, Washington, (hereinafter the "Protected Property"). The Protected Property is legally described in the Record of Survey #4777, signed and stamped by a licensed surveyor, for Snohomish County Public Works Advanced Mitigation Site Development Project RC1730, Auditor's File #201808315006, incorporated into this Covenant by reference. Exhibit A is a site map of the Protected Property showing the location of wetlands and their buffers. The map in Exhibit A corresponds with the legal description in the Record of Survey #4777. If there are differences between the map in Exhibit A and the Record of Survey #4777, the legal description in the Record of Survey #4777 shall prevail.
2. The Protected Property possesses Conservation Values consisting of wetlands, riparian habitat, floodplains, fish and wildlife habitat, their buffers and other natural and open space areas of ecological importance.
3. The Grantee has approved Grantor's use of the Protected Property for advance mitigation purposes subject to the terms and conditions set forth in Grantee's Section 401 Water Quality Certification Order #85631, dated October 29, 2020, and subsequently corrected by Grantee to Order #18224, dated December 31, 2020 (Exhibit B),

(hereinafter “Order”) pursuant to which Grantor is required as a condition of approval to record a restrictive covenant for the Protected Property.

4. The purpose of this Covenant is to preserve and maintain the Conservation Values of the Protected Property in perpetuity by permitting only those land uses on the Protected Property that do not impair or interfere with the Conservation Values as further provided in this Covenant for the purposes of satisfying those requirements of the Order.
5. This Covenant is executed pursuant to the Little Bear Creek Advance Mitigation Site Project, Snohomish County, Washington, Mitigation Plan dated October 2020 (hereinafter “Mitigation Plan”), the Order, and RCW 64.04.
6. This mitigation is required under the authority of chapter 90.48 RCW, chapter 173-201A WAC, 33 U.S.C. 1341 and Chapter 30.62A Snohomish County Code (SCC).

## COVENANT

Snohomish County, as Grantor and fee simple owner of the Protected Property, herein covenant and declare on behalf of themselves and all heirs, assigns, and successors in interest into whose ownership the below described real property might pass, that the Wetlands, Streams, and their associated buffers on the Protected Property will be preserved and maintained in their natural state in perpetuity. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the Grantor has in the property and shall run with the land and be binding on all current and future owners of any portion of, or interest in, the Protected Property.

### **Section 1. General Restrictions and Requirements.**

Any activity on, or use of the Protected Property inconsistent with the purposes of the Covenant is prohibited. The following general restrictions and requirements shall apply to the Protected Property:

- a. Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Protected Property without providing for the continued preservation and maintenance of the Wetlands identified in Exhibit A and continued compliance with this Covenant.
- b. Leases.** Grantor shall restrict any lease for any portion of the Protected Property to uses and activities consistent with this Covenant and will notify all lessees of the restrictions on the use of the Protected Property.
- c. Preservation of Reference Monuments.** Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor shall have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

**d. Noxious Weed Control.** Grantor shall comply with all state and local requirements for controlling noxious weeds within the Protected Property. All pesticide and herbicide application must be performed by a licensed applicator.

## **Section 2. Specific Prohibitions.**

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific, non-exclusive list of activities and uses are expressly prohibited on the Protected Property:

- a.** Subdivision and residential development;
- b.** Commercial, industrial, or agricultural development and/or use;
- c.** Alteration of the land surface or water bodies;
- d.** Timber harvest or other removal of vegetation, except for cutting hazard trees or limbs or removing nonnative invasive species. Downed hazard trees, limbs, and standing woody debris (i.e., snags) shall be left on the property;
- e.** The placement or construction of any buildings, structures, or other improvements of any kind, including, without limitation, roads, docks, floats and parking lots;
- f.** The disposal or storage of waste, including, without limitation, rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous substances. The term “hazardous substances” shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful, or are designated as, or contain components that are hazardous, toxic, dangerous, or harmful, and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product.;
- g.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.
- h.** The exploration for, or development and extraction or removal of, oil, gas, coal, limestone, fossils, metals, geothermal resources, peat, sand, gravel, soils, or rock of any type on or below the surface of the Protected Property.
- i.** The plowing, tilling, or cultivating the soils or vegetation, *except* as expressly provided in Section 3 below;
- j.** The introduction of nonnative wetland plants and nonnative invasive species on the Protected Property, or the planting or introduction of any species of vegetation *except* as expressly provided in Section 3 below;
- k.** The operation of motorcycles, dune buggies, snowmobiles, or other type of off-road motorized recreational vehicles, the launching or beaching of motorized watercraft, or the operation of other sources of excessive noise pollution on the Protected Property, *except* as expressly provided in Section 3 below;
- l.** The placement of commercial signs, billboards, or other advertising material on the Protected Property;
- m.** The above- or below-ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities on the Protected Property *except* as deemed necessary by the Grantor to preserve, protect or effectuate the intent of this Covenant;

- n. The undertaking of recreational activities and the installation or construction of improvements in furtherance of the same;
- o. The keeping of domestic animals on the Protected Property;
- p. Hunting or trapping, except to the extent determined necessary by Grantee to preserve or protect the Conservation Values of the Protected Property or *except* as expressly allowed in Section 3 below;
- q. Draining, filling, dredging, ditching, diking, impounding, altering or manipulating aquatic resources of the Protected Property, except to the extent determined necessary by Grantee to preserve or protect the Conservation Values of the Protected Property;
- r. The gathering, picking, taking, or harvesting of native plants on the Protected Property, *except* as expressly provided in Section 3 below.

### **Section 3. Permitted Uses and Activities.**

The following uses and activities, as provided in the Mitigation Plan and the Order are permitted on the Protected Property.

- a. Construction, installation, and planting activities, as specified, to re-establish, rehabilitate, create, and enhance wetlands and their buffers
- b. Installation of fences within or around the Protected Property.
- c. Monitoring activities as specified.
- d. Habitat Stewardship, Restoration, and Enhancement. Maintaining, monitoring, removing and controlling noxious weeds and other invasive species, repairing and replacing fences and signs, removing trash, and engaging in other activities to maintain or further restore or enhance the Conservation Values of the Protected Property consistent with Grantor's use of the Protected Property as an Advance Wetland Mitigation Site in accordance with the Order.
- e. Activities necessary to protect human health or safety on or about the Protected Property, or that are required by and subject to compulsion or any governmental agency with authority to require such activity; provided that any such activity shall be conducted so that adverse impacts to the Conservation Values of the Protected Project are avoided, or, if avoidance is not possible, minimized to the greatest extent possible under the circumstances.
- f. The installation and maintenance of signs specific to the compensatory mitigation site, *provided* that such installation does not adversely affect the Conservation Values, and *further provided* that signs in excess of twenty-five (25) square feet in area shall not be permitted.
- g. Other uses and activities as authorized in writing by Grantee.

### **Section 4. Access.**

- a. The Grantor freely and voluntarily grants Grantee and the U.S. Army Corps of Engineers (hereinafter "Corps") and its authorized representatives, upon reasonable notice, the right to enter the Protected Property at reasonable times to evaluate the effectiveness of this Covenant, and enforce compliance with this Covenant and those actions.

- b. No right of access or use by a third party to any portion of the Protected Property is conveyed by this instrument.

**Section 5. Notice Requirements.**

a. **Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation in writing to Grantee.

b. **Emergencies.** For any emergency or significant change in site conditions due to Acts of Nature (for example, flood or fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Grantee in writing of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

c. **Notification Procedure.** Any required written notice, approval, reporting or other communication shall be sent by email to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to email, such as personal delivery, first class mail, or other electronic means, may be used for these communications.

Snohomish County Public Works Attn: Kelly A. Snyder, MPA, Director 3000 Rockefeller Ave M/S 607 Everett, WA 98201 kelly.snyder@snoco.org Phone # (425) 388-6652	Washington State Department of Ecology SEA Program Federal Permit Coordinator P.O. Box 47600 Olympia, WA 98504 –7600 fednotification@ecy.wa.gov
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**Section 6. Enforcement and Construction.**

- a. This Covenant is being freely and voluntarily granted by the Grantor.
- b. Within ten (10) days of execution of this Covenant, Grantor shall provide Grantee with a copy of the Covenant and proof of recording.
- c. Grantee shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity. Enforcement of the terms of this Covenant shall be at the discretion of Grantee, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Grantee of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Grantee under this Covenant.
- d. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

## **Section 7. Costs, Liabilities, Taxes**

- a. **Costs, Legal Requirements, Liabilities and Insurance.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property.
- b. **Taxes and Other Costs.** Grantor shall pay all taxes, fees and charges assessed against the Protected Property by governmental authority as they become due.

## **Section 8. Extinguishment**

If circumstances arise in the future that render the purpose of this Covenant impossible to accomplish, this Covenant may be terminated or extinguished, whether in whole or in part, by mutual agreement of Grantor and Grantee or by judicial proceedings in a court having jurisdiction.

## **Section 9. Amendment**

If circumstances arise under which an amendment to or modification of this Covenant would be appropriate, Grantor shall be free to amend this Covenant upon approval of such amendment or modification by the Corps and Grantee. Any such amendment shall be recorded in the official records of Snohomish County, Washington, and any other jurisdiction in which such recording is required.

## **Section 10. General Provisions**

- a. **Controlling Law.** The interpretation and performance of this Covenant shall be governed by the laws of the State of Washington.
- b. **Liberal Construction.** This Agreement shall be construed liberally to secure the beneficial intents and purposes hereof, and shall be construed liberally as necessary to protect and further the interests of the parties hereto. If any provision in this Covenant is found to be ambiguous, an interpretation consistent with the Purpose of this Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c. **Severability.** If any provision of this Covenant, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Covenant, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.
- d. **Entire Agreement.** Except as to any other written agreement between the Parties, all prior discussions, negotiations, understandings, communications, or oral agreements regarding this Covenant have been superseded by, and are merged into, this Covenant.

- e. **Effective Date.** The effective date of this Covenant is the date of recording of this Covenant.

**Section 11. Schedule Of Exhibits**

- a. Exhibit A – Protected Property and Wetlands Map  
b. Exhibit B – Washington State Department of Ecology Water Quality Certification Orders #85631 and #18224

The undersigned representative of Grantor warrants that Snohomish County holds the title to the Protected Property and has authority to execute this Covenant.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
By: Ken Klein  
Title: Snohomish County Executive Director

**REPRESENTATIVE ACKNOWLEDGEMENT**

STATE OF WASHINGTON  
COUNTY OF SNOHOMISH

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, I certify that Ken Klein personally appeared before me, acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument, and acknowledged it as the Executive Director of Snohomish County to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

\_\_\_\_\_  
Notary Public in and for the State of Washington  
Residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_



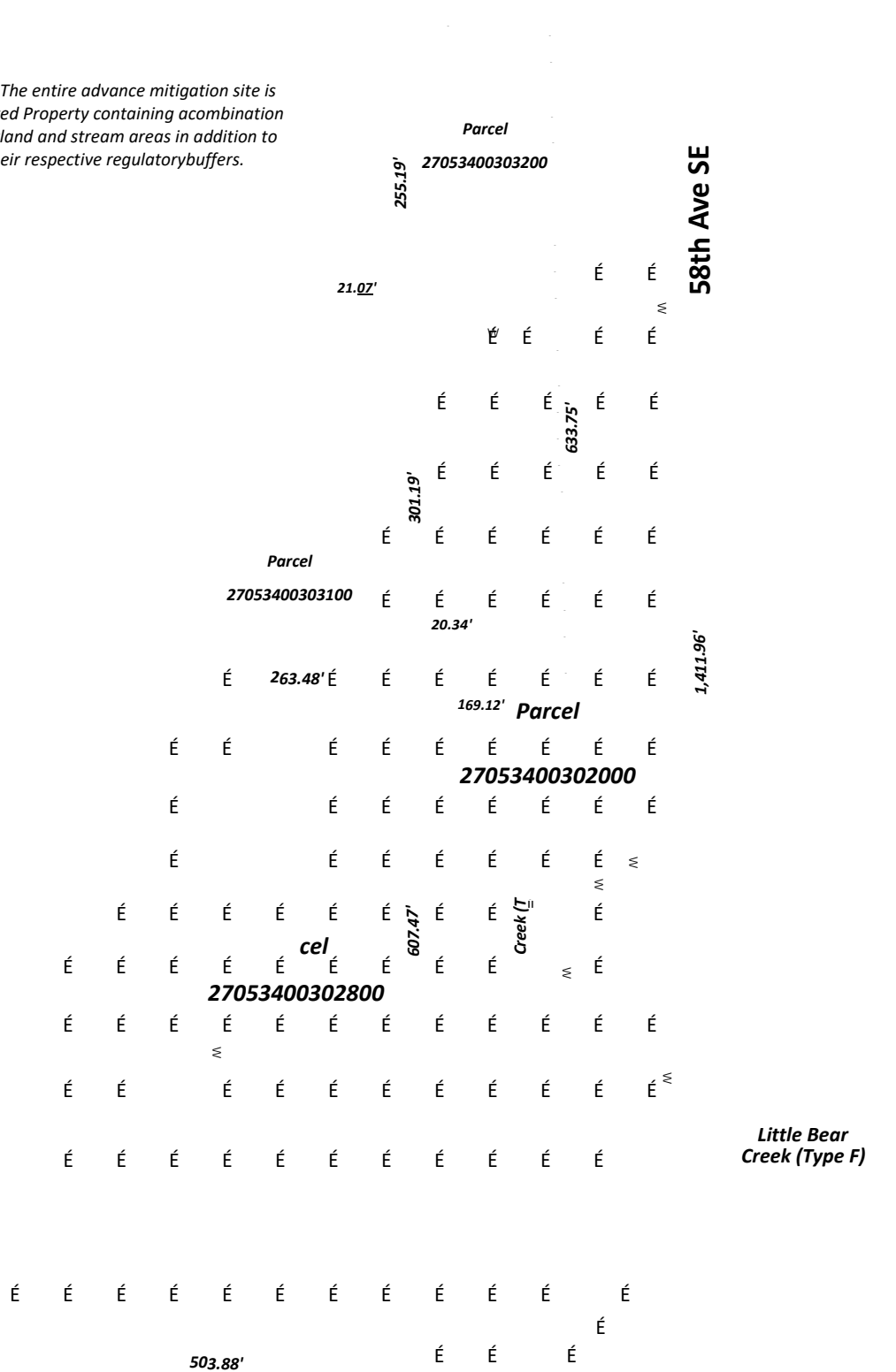
**Exhibit A**

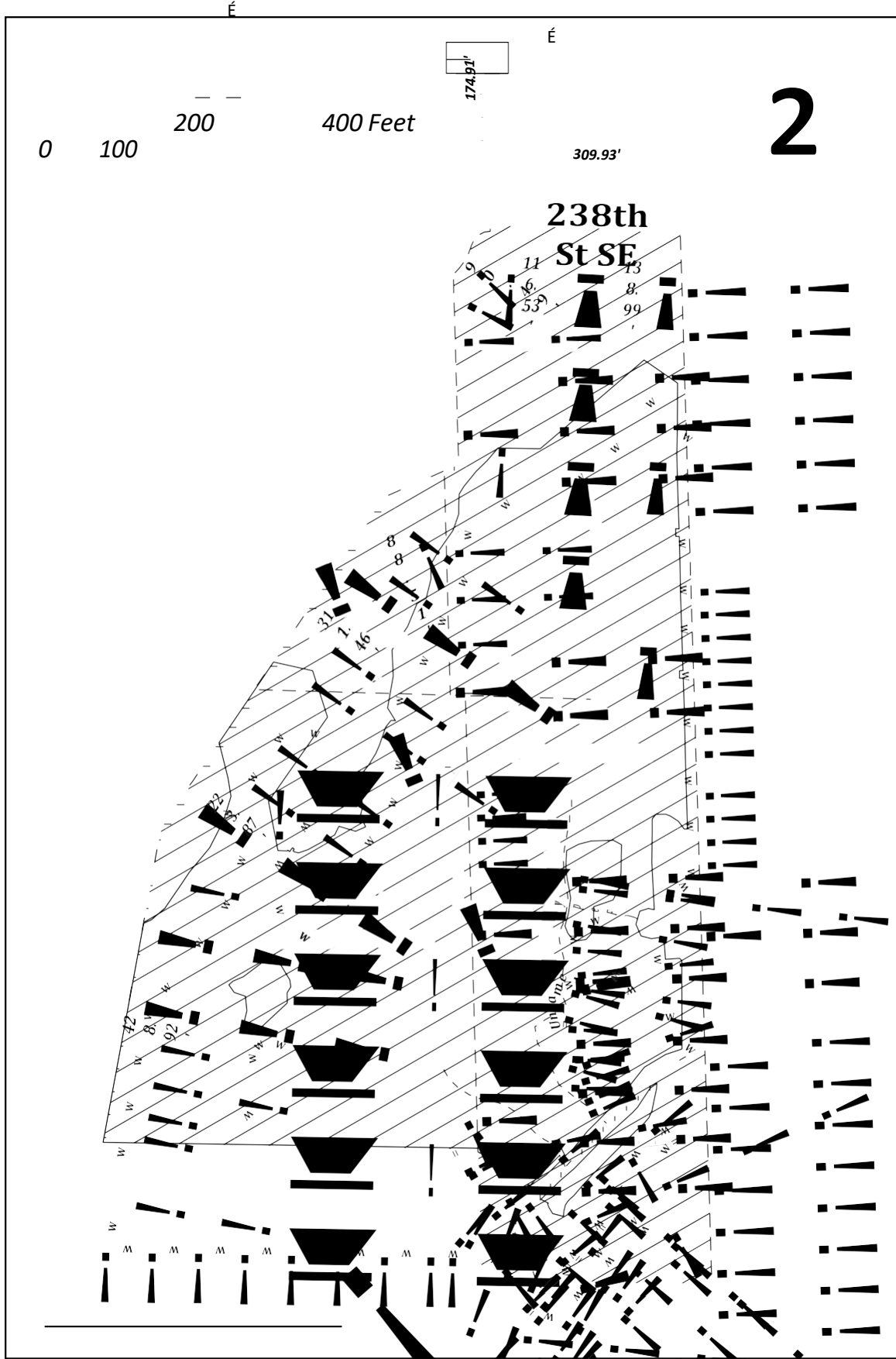
**PROTECTED PROPERTY AND WETLANDS MAP**

# Legend

- Property Line
- Streams
- Wetland Edge
- Protected Property
- Wetland

**Note:** The entire advance mitigation site is Protected Property containing a combination of wetland and stream areas in addition to their respective regulatory buffers.





0 100

200

400 Feet

309.93'

2

238th  
St SE

174.91'

11 13  
8 99  
53

31 46

42 88 92

47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

**Exhibit B**

**WASHINGTON STATE DEPARTMENT OF ECOLOGY  
WATER QUALITY CERTIFICATION ORDERS # 85631 AND #18224**



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

*Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000  
711 for Washington Relay Service • Persons with a speech disability can call (877) 833-6341*

October 29, 2020

Crilly Ritz  
Snohomish County Public Works  
3000 Rockefeller Avenue, MS 607  
Everett, WA 98201

**RE: Water Quality Certification Order No. 85631 for Corps No. NWS-2019-505, Little Bear Creek Advance Mitigation Project, Snohomish County, Washington**

Dear Crilly Ritz:

On June 2, 2020, Snohomish County Public Works submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Little Bear Creek Advance Mitigation project in Snohomish County Washington.

On behalf of the state of Washington, Ecology certifies that the work described in the JARPA and the public notice 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 Order.

If you have any questions, please contact Doug Gresham at (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  
Northwest Regional Office

Enclosure

e-cc: Andrew Shuckhart, Corps of Engineers  
Scott Olmstead, ESA  
Loree' Randall, Ecology  
Rebekah Padgett, Ecology  
ECY RE FEDPERMITS

**IN THE MATTER OF GRANTING A ) ORDER # 85631**  
**WATER QUALITY ) Corps Reference No. NWS-2019-505**  
**CERTIFICATION TO ) Little Bear Creek Advance Mitigation Project;**  
Snohomish County Public Works ) Snohomish County, Washington  
in accordance with 33 U.S.C. 1341 )  
(FWPCA § 401), RCW 90.48.120, RCW )  
90.48.260 and Chapter 173-201A WAC )

Snohomish County Public Works Department  
Attn: Crilly Ritz  
3000 Rockefeller Avenue, MS 607  
Everett, WA 98201

On June 2, 2020, the Department of Ecology (Ecology) received a request from Snohomish County Public Works for a Section 401 Water Quality Certification (WQC). A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on June 8, 2020.

The proposed project entails construction of a 17-acre advance wetland mitigation site adjacent to Little Bear Creek that would offset wetland impacts from future road improvement projects. The mitigation plan proposes establishing credits through 0.30 acres of wetland creation, 4.12 acres of wetland reestablishment, 0.46 acres of wetland rehabilitation, 6.55 acres of wetland enhancement, 4.85 acres of buffer enhancement, and 190 linear feet of floodplain enhancement. The project site is located west of 58th Avenue SE in Section 34, Township 27N, Range 5E, Water Resource Inventory Area (WRIA) No. 8, Little Bear Creek watershed.

## **AUTHORITIES**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed this application 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 (FWPCA §§ 301, 302, 303, 306, and 307);
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; and,
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.

## **WATER QUALITY CERTIFICATION CONDITIONS**

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will comply with applicable water quality standards and other appropriate requirements of state law. 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, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize Snohomish County Public Works 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 certification absolves Snohomish County Public Works from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments resulting from project construction or operations.

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

- A1. For purposes of this Order, the term “Applicant” shall mean Snohomish County Public Works and its agents, assignees, and contractors.
- A2. All submittals required by this Order shall be sent to Ecology’s Northwest Regional Office, Attn: 401/CZM Federal Permit Manager, Shorelands and Environmental Assistance Program via email to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc: [doug.gresham@ecy.wa.gov](mailto:doug.gresham@ecy.wa.gov) and [patricia.johnson@ecy.wa.gov](mailto:patricia.johnson@ecy.wa.gov). The submittals shall be identified with Order #85631 and include the Applicant name, project name, project contact, and the contact’s phone number.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 2, 2020.
- A4. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that might significantly and adversely affect water quality, other than those project changes required by this Order.
- A5. Within 30 days of receipt of any updated information, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
- A6. This Order is not effective until the U.S. Army Corps of Engineers (Corps) issues a permit for this project.
- A7. The Applicant shall send (per A2.) a copy of the final Corps permit to Ecology’s Federal Permit Manager within two weeks of receiving it.

- A8. The Applicant shall keep copies of this 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.
- A9. The Applicant shall provide access to the Little Bear Creek Advance Wetland Mitigation Site (AWMS) upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure conditions of this Order are being met.
- A10. 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 water quality.
- A11. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48), or the federal Clean Water Act, Ecology may issue an amendment to this Order to incorporate any such changes or amendments applicable to this project.
- A12. The Applicant shall provide to Ecology a signed statement (see Attachment A for an example) that s/he has read and understands the conditions of this Order and any permits, plans, documents, and approvals referenced herein. The signed statement shall be submitted to Ecology per Condition A2 at least seven (7) days prior to start of in-water work.
- A13. The Applicant shall ensure all project engineers, contractors, and other workers at the AWMS 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.
- A14. 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.
- A15. Failure of any person or entity 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.

**B. Notification Conditions:**

- B1. The following notification shall be made to Ecology per Condition A2:



- a) Immediately following a violation of state water quality standards or when the project is out of compliance with any of the Conditions of this Order.
    - i. In addition to the phone or email notification, the Applicant 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.
  - b) At least ten (10) days prior to all pre-construction meetings.
  - c) At least ten (10) days prior to the onset of work at the AWMS.
  - d) Within ten (10) days after completing work at the AWMS.
- B2. If the AWMS construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction is completed.
- C. Construction Conditions:**
- C1. The Applicant shall implement the *Little Bear Creek Advance Mitigation Site Project, Snohomish County, Washington—Mitigation Plan* (hereafter called the “Mitigation Plan”), prepared by Environmental Science Associates, and dated October 2020 or as revised and approved by Ecology.
  - C2. The Applicant shall submit any proposed changes to the Mitigation Plan in writing to Ecology (see A2) for review and approval before implementing the changes.
  - C3. The Applicant shall have a qualified wetland professional at the AWMS to supervise during construction and planting.
  - C4. Applicant shall obtain and comply with a Construction Stormwater General Permit for this project. (WAR # 308974-3)
  - C5. Construction storm water, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
  - C6. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
  - C7. All construction debris shall be properly disposed of in a manner to prevent it from entering the waters of the state.

- C8. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- C9. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- C10. Clean Fill Criteria: Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.
- C11. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.
- C12. The Applicant shall ensure all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers and landward of the 100-year floodplain, unless otherwise provided for in the Mitigation Plan.
- C13. The Applicant shall ensure no material is stockpiled within existing wetlands or their buffers at the AWMS at any time, unless provided for in the Mitigation Plan.
- C14. The Applicant shall not use polyacrylamide at the AWMS.
- C15. Aquatic herbicides can be used or applied only by certified applicators or persons under the direct supervision of a certified applicator, and only for those uses covered by the certified applicator's license category.
  - a. Applicators are required to be permitted under Ecology's Noxious Weed Control Permit.
  - b. Applicators shall comply with all conditions of the Noxious Weed Control Permit.
- C16. If weed-barrier fabric is used on the site, the Applicant shall use only water permeable, fully biodegradable, non-toxic weed-barrier fabric for the entire site and/or individual plant weed control, unless otherwise approved by Ecology. If non-biodegradable plastic weed-barrier fabric is approved by Ecology, it shall be used only at the base of individual plants and shall be removed before it starts to break down, before it interferes with plant growth, or before the end of the monitoring period, whichever comes first.
- C17. If seeding is used for temporary erosion control, it must be a seed mix consisting of native, annual, non-invasive plant species, unless otherwise approved by Ecology.

- C18. The Applicant shall not use solid or mesh plant protector tubes at the AWMS, unless otherwise approved by Ecology.
- C19. The Applicant shall place signs protecting the AWMS per the Mitigation Plan, in Appendix A–100% Design Plans, Sheet C14.
- C20. Upon completion of site grading and prior to planting, the Applicant shall submit to Ecology per Condition A2 written confirmation (email or signed letter) from a surveyor or project engineer that the finished grades are consistent with the approved Mitigation Plan or subsequent Ecology-approved plan changes and also indicate how final elevations were determined.

**D. Monitoring and Maintenance Conditions:**

- D1. After completing construction and planting of the AWMS, the Applicant shall submit to Ecology (see A2) an as-built report, including plan sheets documenting site conditions at Year Zero:
  - a. An electronic file shall be submitted within 90 days of completing construction and planting.
  - b. Include the information listed in Attachment B (Information Required for As-built Reports).
  - c. Include documentation of the recorded legal mechanism required in Condition D2.
- D2. The Applicant shall provide Ecology with documentation of a recorded restrictive covenant for the AWMS. The Applicant shall:
  - a. Request a restrictive covenant template from Ecology or use an appropriate alternative to develop a draft restrictive covenant.
  - b. Send the draft restrictive covenant to Ecology for review and approval.
  - c. Record the Ecology-approved restrictive covenant with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.
  - d. Record the restrictive covenant with a figure that corresponds with the legal description showing the area that is being protected, a copy of this Order, and a site map showing the location of wetlands and their buffers that are being protected.
  - e. Send a copy of the recorded restrictive covenant to Ecology with the As-Built Report (see D1), unless otherwise approved by Ecology.

- D3. The Applicant shall water and maintain all plantings so as to meet the Mitigation Plan's performance standards. If an irrigation system is installed, it shall be removed by the end of year three unless Ecology authorizes in writing the system to remain for a longer period.
- D4. The Applicant shall monitor the AWMS for a minimum of 10 years documenting conditions for years 1, 2, 3, 5, 7, and 10.
- D5. The Applicant shall submit to Ecology (see A2) monitoring reports by December 31 of each monitoring year as listed in Attachment D (Information Required for Monitoring Reports).
- D6. The Applicant shall implement the Mitigation Plan's contingency measures if the Plan's goals, objectives, or performance standards are not being met.
- D7. Prior to implementing contingency measures not specified in the Mitigation Plan, the Applicant shall consult with and obtain written approval from Ecology for the contingency measures.
- D8. When necessary to meet the performance standards, the Applicant shall replace dead or dying plants with the same species, or an appropriate native plant alternative, during the current or upcoming planting season and note species, numbers, and approximate locations of all replacement plants in the subsequent monitoring report.
- D9. For monitoring years five (5) and ten (10), the Applicant shall use the currently approved federal wetland delineation manual and appropriate regional supplement to delineate all compensatory wetlands and include delineation information (e.g., data sheets, maps, etc.) in the monitoring reports.
- D10. For monitoring years five (5) and ten (10), the Applicant shall use *Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington* (Ecology Publication No. 10-06-011) to determine the actual number of credits the site has achieved based on current conditions.
- D11. If the Applicant has not met all conditions, including performance standards for the AWMS, at the end of the monitoring period, Ecology may require additional maintenance and monitoring.
- E. Mitigation Credit Use Conditions:**
- E1. All future Snohomish County Public Works projects that propose to impact wetlands and use the AWMS to offset those impacts will be evaluated individually under applicable state regulations and will be required to avoid and minimize wetland impacts to the greatest extent practicable.

- E2. Only Snohomish County Public Works will be allowed to use mitigation credits at the AWMS Site to offset wetland impacts associated with Snohomish County Public Works projects. No other entity can use or purchase mitigation credits at the AWMS.
- E3. Ecology will determine, on a case-by-case basis, whether mitigation credits generated by the AWMS will be considered suitable compensation to offset Snohomish County Public Works proposed wetland impacts. This Order does not guarantee Ecology will deem the AWMS suitable compensation for any specific wetland impact.
- E4. If the Applicant proposes to use mitigation credits at the AWMS within 24 months of construction and planting of the AWMS, then the applicant shall use the appropriate concurrent temporal loss factor to calculate the debits for proposed wetland impacts.
- E5. Snohomish County Public Works must maintain a ledger of all mitigation credits released, used, and remaining at the AWMS. Snohomish County Public Works must submit an updated copy of this ledger to Ecology each time mitigation credit is used at the AWMS and include a current copy of the ledger with each monitoring report.
- E6. Documentation demonstrating attainment of performance standards shall be submitted to Ecology for review and approval as a condition of Ecology's authorization for release of mitigation credits, or use of mitigation credits to offset wetland impacts. Documentation can typically be included in required monitoring reports. Ecology reserves the right to visit the site to confirm whether the monitoring report reflects conditions at the AWMS.
- E7. If the Applicant has not met all conditions, including performance standards for the AWMS, at the end of the monitoring period, Ecology may reduce the number of Total Credits available for use or require additional compensation to ensure wetland impacts associated with projects utilizing AWMS mitigation credits are adequately offset.

**F. Water Quality Conditions:**

- F1. This Order does not authorize exceedances of water quality standards established in WAC 173-201A.
- F2. Work below Ordinary High Water Mark of watercourses shall occur in the dry, to the extent practicable.

**G. Emergency/Contingency Measures:**

- G1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.

- G2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- G3. 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.
- G4. Any work that is causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
- a. Cease operations at the location of the violation or spill.
  - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
  - c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Permit Manager at (360) 407-7032 or (360) 407-7000.
  - d. 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.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

## **H. Timing Requirements**

- H1. This Order is valid until the end of the monitoring period or until all mitigation credits (as defined in the Mitigation Plan) have been used, and upon receipt of a closeout letter from Ecology.

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

**CONTACT INFORMATION**

Please direct all questions about this Order to:

Doug Gresham  
 Department of Ecology, Northwest Regional Office  
 3190 160th Avenue SE  
 Bellevue, WA 98008  
 (425) 649-7199  
 Doug.Gresham@ecy.wa.gov

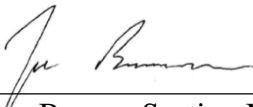
**MORE INFORMATION**

- **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 29th day of October, 2020, at the Department of Ecology, Bellevue, 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**

Little Bear Creek Advance Mitigation Project  
Snohomish County Public Works  
Water Quality Certification Order No. 85631 - Corps Reference No. NWS-2019-505

I, \_\_\_\_\_, state that I will be involved as an agent or contractor for Snohomish County Public Works in the site preparation and/or construction of the Little Bear Creek Advance Mitigation site located near Woodinville, Snohomish County, Washington. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order No. 85631 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

## **Attachment B**

### **Information Required for As-built Reports**

Little Bear Creek Advance Mitigation Project  
Water Quality Certification Order # 85631 - Corps Reference # NWS-2019-505

Ecology requires the following information for as-built reports submitted under this Order. Ecology will accept additional information that may be required by other agencies.

#### **Background Information**

- 1) Project name.
- 2) Ecology Order number and the Corps reference number.
- 3) Name and contact information of the person preparing the as-built report. Also, if different from the person preparing the report, include the names of:
  - a) The applicant
  - b) The landowner
  - c) Wetland professional on site during construction of the mitigation site(s).
- 4) Date the report was produced.

#### **Mitigation Project Information**

- 5) Brief description of the **final** mitigation project with any changes from the approved plan made during construction. Include:
  - a) **Actual** acreage of Cowardin classes and mitigation type(s) (re-establishment, rehabilitation, creation, enhancement, preservation, upland, buffers).
  - b) Important dates, including:
    - i. Start of project construction.
    - ii. When work on the mitigation site began and ended.
    - iii. When different activities such as grading, removal of invasive plants, installing plants, and installing habitat features began and ended.
- 6) Description of any problems encountered and solutions implemented (with reasons for changes) during construction of the mitigation site(s).
- 7) List of any follow-up actions needed, with a schedule.
- 8) Vicinity map showing the geographic location of the site(s) with landmarks.
- 9) Mitigation site map(s), 8-1/2" x 11" or larger, showing the following:
  - a) Boundary of the site(s).
  - b) Topography (with a description of how elevations were determined).
  - c) Installed planting scheme (quantities, densities, sizes, and approximate locations of plants, as well as the source(s) of plant material).
  - d) Location of habitat features.
  - e) Location of permanent photo stations and any other photos taken.

Include the month and year when each map was produced or revised. The site map(s) should reflect on-the-ground conditions after the site work is completed.

**Attachment B** - Order #85631, Corps No. NWS-2019-505

*Little Bear Creek Advanced Mitigation Project*

*October 29, 2020*

*Page 2 of 2*

- 10) Photographs taken at permanent photo stations and other photographs, as needed. Photos must be dated and clearly indicate the direction from which each photo was taken. Photo pans are recommended.
- 11) A copy of any deed notifications, conservation easements, or other approved site protection mechanism.

## **Attachment D**

### **Information Required for Monitoring Reports**

Little Bear Creek Advance Mitigation Project  
Water Quality Certification Order # 85631 - Corps Reference # NWS-2019-505

Ecology requires the following information for monitoring reports submitted under this Order. Ecology will accept additional information that may be required by other agencies.

#### **Background Information**

- 1) Project name.
- 2) Ecology Order number and the Corps reference number.
- 3) Name and contact information of the person preparing the monitoring report. Also, if different from the person preparing the report, include the names of:
  - a) The applicant
  - b) The landowner
  - c) The party responsible for the monitoring activities.
- 4) Dates the monitoring data were collected.
- 5) Date the report was produced.

#### **Mitigation Project Information**

- 6) Brief description of the mitigation project, including acreage of Cowardin classes and mitigation type(s) (re-establishment, rehabilitation, creation, enhancement, preservation, upland, buffers).
- 7) Description of the monitoring approach and methods. For each performance standard being measured provide the following information:
  - a) Description of the sampling technique (e.g., monitoring point for soil or hydrology, line or point intercept method, ocular estimates in individually placed plots). If you are using a standardized technique, provide a reference for that method.
  - b) Size and shape of plots or transects.
  - c) Number of sampling locations and how you determined the number of sampling locations to use.
  - d) Percent of the mitigation area being sampled.
  - e) Locations of sampling (provide a map showing the locations), how you determined where to place the sampling locations (e.g., simple random sample), and whether they are permanent or temporary.
  - f) Schedule for sampling (how often and when).
  - g) Description of how the data was evaluated and analyzed.

- 8) Summary table(s) comparing performance standards with monitoring results and whether each standard has been met.
- 9) Discussion of how the monitoring data were used to determine whether the site(s) is meeting performance standards.
- 10) Goals and objectives and a discussion of whether the project is progressing toward achieving them.
- 11) Summary, including dates, of management actions implemented at the site(s), for example, maintenance and corrective actions.
- 12) Summary of any difficulties or significant events that occurred on the site that may affect the success of the project.
- 13) Specific recommendations for additional maintenance or corrective actions with a timetable.
- 14) Photographs taken at permanent photo stations and other photographs, as needed. Photos must be dated and clearly indicate the direction the camera is facing. Photo pans are recommended.
- 15) Vicinity map showing the geographic location of the site(s) with landmarks.
- 16) Mitigation site map(s), 8-1/2" x 11" or larger, showing the following:
  - a) Boundary of the site(s).
  - b) Location of permanent photo stations and any other photos taken.
  - c) Data sampling locations, such as points, plots, or transects.
  - d) Approximate locations of any replanted vegetation.
  - e) Changes to site conditions since the last report, such as areas of regrading, a shift in the location of Cowardin classes or habitat features, or a change in water regime.

Include the month and year when each map was produced or revised. The site map(s) should reflect on-the-ground conditions during the most recent monitoring year.



**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

*Northwest Regional Office 3190 160th SE Bellevue, Washington 98008-5452 (425) 649-7000*

December 31, 2020

Snohomish County Public Works  
Crilly Ritz  
3000 Rockefeller Avenue, MS 607  
Everett, WA 98201

**RE: Correction to Water Quality Certification Order No. 85631 for Corps No. NWS-2019-505, Little Bear Creek Advance Mitigation Project, Snohomish County, Washington**

Dear Crilly Ritz:

Enclosed is a correction to Water Quality Certification Order # 85631, issued on October 29, 2020, for the above project. We have attached an excerpt of the Water Quality Certification with a strikeout version that reflects the changes made. The purpose of this change is to correct a typographical error from the inadvertent substitution of the facility identification number (85631) for the correct Administrative Order number (18224). All other conditions of the Water Quality Certification remain in effect.

If you have any questions, please contact Doug Gresham at (425) 429-1846.

Sincerely,

A handwritten signature in black ink that reads "Doug Gresham".

Doug Gresham, PWS  
Wetland Specialist  
Shorelands and Environmental Assistance Program

Enclosure

e-cc: Andrew Shuckhart, Corps of Engineers  
ECY RE FEDPERMITS

Loree' Randall – HQ, SEA  
Rebekah Padgett, Ecology  
Scott Olmstead, ESA

**IN THE MATTER OF GRANTING A ) ORDER # ~~85631~~18224**  
**WATER QUALITY ) Corps Reference No. NWS-2019-505**  
**CERTIFICATION TO ) Little Bear Creek Advance Mitigation Project;**  
 Snohomish County Public Works ) Snohomish County, Washington  
 in accordance with 33 U.S.C. 1341 )  
 (FWPCA § 401), RCW 90.48.120, RCW )  
 90.48.260 and Chapter 173-201A WAC )

Snohomish County Public Works Department  
 Attn: Crilly Ritz  
 3000 Rockefeller Avenue, MS 607  
 Everett, WA 98201

On June 2, 2020, the Department of Ecology (Ecology) received a request from Snohomish County Public Works for a Section 401 Water Quality Certification (WQC). A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on June 8, 2020.

The proposed project entails construction of a 17-acre advance wetland mitigation site adjacent to Little Bear Creek that would offset wetland impacts from future road improvement projects. The mitigation plan proposes establishing credits through 0.30 acres of wetland creation, 4.12 acres of wetland reestablishment, 0.46 acres of wetland rehabilitation, 6.55 acres of wetland enhancement, 4.85 acres of buffer enhancement, and 190 linear feet of floodplain enhancement. The project site is located west of 58<sup>th</sup> Avenue SE in Section 34, Township 27N, Range 5E, Water Resource Inventory Area (WRIA) No. 8, Little Bear Creek watershed.

**AUTHORITIES**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed this application 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 (FWPCA §§ 301, 302, 303, 306 and 307);
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; and
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.

**WATER QUALITY CERTIFICATION CONDITIONS**