



STATE OF WASHINGTON  
**DEPARTMENT OF ECOLOGY**

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

May 16, 2023

Toll Bros., Inc.  
ATTN: Jeff Peterson  
8815 122nd Avenue NE, #200  
Kirkland, WA 98033

Re: Administrative Order No. **21504** to permanently fill/impact 13,272 ft<sup>2</sup> of non-federally regulated wetlands, which are waters of the state, to construct Hewitt Property project in Snohomish County, Washington

Dear Jeff Peterson:

The Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application (JARPA) on October 21, 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](mailto: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)

Administrative Order No. 21504

May 16, 2023

Page 2 of 2

By certified mail: 9171 9690 02332 1185 93

Sent via email to: [jpeterson@tollbrothers.com](mailto:jpeterson@tollbrothers.com)

ec: Kelly Werdick, U.S. Army Corps of Engineers  
Alia Richardson, Wetland Resources  
Doug Gresham, Department of Ecology  
[ECYREFEDPERMITS@ECY.WA.GOV](mailto:ECYREFEDPERMITS@ECY.WA.GOV)

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

IN THE MATTER OF ISSUING AN	) ORDER No. 21504
ADMINISTRATIVE ORDER TO	) Corps Ref. No. NWS-2021-1159
Toll Bros., Inc.	) Hewitt Property, Wetland A located in
pursuant to RCW 90.48.120 and WAC 173-201A	) Snohomish County, Washington.

TO: Toll Bros., Inc.  
ATTN: Jeff Peterson  
8815 122<sup>nd</sup> Avenue NE, #200  
Kirkland, WA 98033

This is an Administrative Order requiring Toll Bros., Inc. 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 U.S. Army Corps of Engineers (Corps) issued a jurisdictional determination on August 31, 2022, concluding that Wetland A is not a water of the U.S. On October 21, 2022, Ecology received a request to impact 13,272 ft<sup>2</sup> of non-federally regulated wetlands, which are waters of the state, to construct the Hewitt Property project in Snohomish County. The project covers three parcels located at 3805-, 3811-, and 3823-240<sup>th</sup> Street SE in Bothell, Section 33, Township 27 N., Range 5 E., Snohomish County, and WRIA 8.

This Administrative Order authorizes 13,272 ft<sup>2</sup> of Category IV wetland impacts at the project location. As compensation for this proposed impact, both on-site and off-site mitigation is proposed in the form of wetland creation, wetland enhancement, and the purchase of mitigation bank credits. Onsite mitigation will occur in Wetland B for a portion of these impacts and includes: 4,454 ft<sup>2</sup> of wetland creation, 8,835 ft<sup>2</sup> of wetland enhancement, and 31,495 ft<sup>2</sup> of buffer enhancement. Offsite mitigation will compensate for the remainder of the proposed impacts (8,829 ft<sup>2</sup>) through the purchase of 0.17 credits from the Keller Farm Mitigation Bank.

For purposes of this Order, the term “Project Proponent” shall mean Toll Bros., Inc. 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 October 21, 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](mailto:fednotification@ecy.wa.gov) and a cc to [doug.gresham@ecy.wa.gov](mailto:doug.gresham@ecy.wa.gov). Any submittals shall reference Order No. 21504.
3. The Project Proponent shall provide access to the project site and mitigation 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. The Project Proponent shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents, and approvals. **These statements shall be provided to Ecology before construction begins at the 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.
- b. At least seven (7) days prior to conducting work activities in wetlands.
- c. Within seven (7) days of completing work activities in wetlands.

**C. Wetland Mitigation Conditions:**

- 1. The Project Proponent shall mitigate wetland impacts as described in the *Critical Area Study and Mitigation Plan for Toll Bros-Hewitt*, prepared by Wetland Resources, and dated May 8, 2023, (hereafter called the "Mitigation Plan") or as modified by this Order or revised and approved by Ecology.
- 2. The Project Proponent shall submit any changes to the Mitigation Plan in writing to Ecology (see A.2) for review and approval before implementing the changes.

**On-site Compensatory Mitigation Conditions**

- 3. The Project Proponent shall have a qualified wetland professional at the wetland mitigation site to supervise during construction and planting.
- 4. Unless otherwise approved by Ecology in writing, the Project Proponent shall begin the compensatory mitigation project before, or concurrently with impacting wetlands, or Ecology may require additional compensation to account for additional temporal loss of wetland functions.
- 5. If the on-site mitigation area cannot be completed within 13 months of the date of this Order, the Project Proponent shall inform Ecology, in writing, of the status of:
  - a. The work activities in wetlands at Hewitt Property.
  - b. On-site wetland mitigation area.

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 wetland impacts at Hewitt Property and on-site wetland mitigation area are complete.

6. The Project Proponent shall ensure that all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers at the wetland mitigation site and above the 100-year floodplain.
7. The Project Proponent shall ensure that no material is stockpiled within existing wetlands or their buffers at the wetland mitigation site at any time, unless provided for in the Mitigation Plan.
8. The Project Proponent shall ensure that no construction debris is deposited within existing wetlands or their buffers at the wetland mitigation site at any time, unless provided for in the Mitigation Plan.
9. The Project Proponent shall not use polyacrylamide at the mitigation site.
10. The Project Proponent shall not use hay or straw on exposed or disturbed soil at the mitigation site, unless otherwise approved by Ecology.
11. 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.
12. If weed-barrier fabric is used on the site, the Project Proponent shall use only permeable, fully biodegradable, non-toxic weed-barrier fabric for 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.

13. If seeding is used as a best management practice for temporary erosion control, it must be a seed mix consisting of native, annual, non-invasive plant species, unless otherwise approved by Ecology.
14. If solid or mesh plant protector tubes are used on the mitigation site, Ecology strongly recommends that the Project Proponent use fully biodegradable options (photodegradable is not considered biodegradable). If non-biodegradable plant protection options are used, they shall be removed before they interfere with plant growth or before the end of the monitoring period, whichever comes first.
15. The Project Proponent shall place permanent signs at the mitigation area's boundaries, including buffers, every 100 feet to mark the area as a wetland mitigation site.
16. Upon completion of site-grading and prior to planting, the Project Proponent shall submit to Ecology written confirmation (email or signed letter, see A.2), from a surveyor or project engineer, that the finished grades are consistent with the approved Mitigation Plan or subsequent Ecology-approved plan changes. The confirmation should indicate how final elevations were confirmed.
17. After completing construction and planting of the mitigation site, the Project Proponent shall submit to Ecology (see A.2) an as-built report, including plan sheets, documenting site conditions at Year Zero. The as-built report must:
  - a. 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 C.18.
18. The Project Proponent shall follow the steps below to record a deed notification for the on-site wetland mitigation area:
  - a. Send a draft deed notification (see Attachment C: Wetland Notice for Deed Notification for an example) to Ecology for review prior to recording and make edits based on Ecology's comments.

- b. Record, on the mitigation site property deed, a description of the mitigation area identified in the final mitigation plan and a site map from the final wetland mitigation plan or as-built report showing the location of wetlands and their buffers.
  - c. Record these documents with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.
  - d. Submit proof of this recorded documentation to Ecology with the As-built report (see C.17), unless otherwise approved by Ecology.
- 19. The Project Proponent shall water and maintain all mitigation site 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 permission is received in writing from Ecology to allow the system to remain for a longer period.
  - 20. The Project Proponent shall monitor the mitigation site for a minimum of 10 years. The Project Proponent shall use the monitoring methods described on pages 19-23 of the Mitigation Plan.
  - 21. The Project Proponent shall submit to Ecology (see A.2) monitoring reports documenting mitigation site conditions for years 1, 2, 3, 5, 7, and 10. The monitoring reports must:
    - a. Be submitted by December 31 of each monitoring year.
    - b. Include the information listed in Attachment D (Information Required for Monitoring Reports).
  - 22. The Project Proponent shall implement the Mitigation Plan's contingency measures if the Mitigation Plan's goals, objectives, or performance standards are not being met.
  - 23. Prior to implementing contingency measures not specified in the Mitigation Plan, the Project Proponent shall consult with and obtain written approval from Ecology for the contingency measures.
  - 24. When necessary to meet the performance standards, the Project Proponent 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.



25. For monitoring years five (5) and ten (10) the Project Proponent 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.
26. If the Project Proponent has not met all conditions, including performance standards, for the mitigation site at the end of the monitoring period, Ecology may require additional monitoring, additional mitigation, or both.

**Wetland Mitigation Bank Conditions**

27. Prior to impacting wetlands, the Project Proponent shall submit to Ecology documentation from the bank sponsor verifying the purchase of 0.17 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.
28. The Project Proponent shall complete the purchase of credits before the impacts to Wetland A occurs, or Ecology may require additional compensation to account for temporal loss of wetland functions.
29. 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. Hewitt Property
  - 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 Hewitt Property is complete and the required credits are purchased.

30. 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. 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 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 Chapter 43.21B RCW and Chapter 371-08 WAC.

#### **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@elaho.wa.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

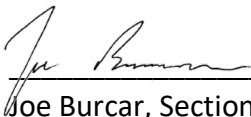
**More information**

- **Pollution Control Hearings Board Website**  
<https://elaho.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 173-201A 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 16th day of May 2023 at the Department of Ecology, Shoreline, Washington



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

Toll Bros., Inc.  
Administrative Order No. 21504  
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**Attachment A**  
**Statement of Understanding**  
**Administrative Order Conditions**

Hewitt Property  
Toll Bros., Inc.  
Administrative Order No. 21504

I, \_\_\_\_\_, state that I will be involved as an agent or contractor for Toll Bros., Inc in the site preparation and/or construction of the Hewitt Property located at 3811 240<sup>th</sup> Street SE, Bothell, Snohomish County, Washington. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Administrative Order No. 21504 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Company

## **Attachment B**

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

Hewitt Property  
Ecology Order No. 21504  
and  
Corps Reference No. NWS-2021-1159

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.

- 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 C**

**Wetland Notice for Deed Notification  
(See Condition C.18)**

Hewitt Property

Administrative Order No. 21504

and

Corps Reference No. NWS-2021-1159

Tax Parcel Number: \_\_\_\_\_

Legal Description: \_\_\_\_\_

Legal Owner: \_\_\_\_\_

NOTICE: This property contains wetlands as defined by Chapter 36.70A030(21) RCW, Chapter 90.58.030 (2)(h) RCW and WAC 173-201A-020. The property was the subject of an Ecology action under Chapter 90.48.260 RCW or Chapter 90.48.120(1) RCW.

\_\_\_\_\_, issued on \_\_\_\_\_, 20\_\_\_\_

(Corps federal reference No.)

(Ecology Order No.)

to \_\_\_\_\_ for \_\_\_\_\_.

(Project Proponent Name)

(Project Name)



Toll Bros., Inc.  
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Restrictions on use or alteration of the wetlands may exist due to natural conditions of the property and resulting regulations. A copy of Ecology's Order and the site map from the final wetland mitigation plan indicating the location of wetlands and their buffers is attached hereto.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_

State of Washington)

County of \_\_\_\_\_)

I certify that I know or have satisfactory evidence that \_\_\_\_\_

signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

GIVEN under my hand an official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_

NOTARY PUBLIC in and for the state of Washington,

residing at \_\_\_\_\_. (Amended by

Ord. 11200 § 50 (part), 1996)

## **Attachment D**

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

Hewitt Property  
Ecology Order No. 21504  
and  
Corps Reference No. NWS-2021-1159

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.