



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

April 24, 2025

Spartan Investment Group, LLC
Attn: Brad Smith
17301 West Colfax Avenue, Suite 120
Golden, CO 80401

RE: Administrative Order No. 23609 to permanently fill 0.418 acres and indirectly impact 0.098 acres of non-federally regulated wetlands, which are waters of the state, to construct Pacific Highway Storage Project in Whatcom County, Washington

Dear Brad Smith:

The Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application (JARPA) on September 27, 2024, 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 Chris Luerkens at (360) 410-4807 or chris.luerkens@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Burcar", is written over a faint, light blue circular stamp.

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

Enclosure (1)

Spartan Investment Group
Administrative Order 23609
April 24, 2025
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By certified mail: 9171 9690 0935 0233 1813 82

Sent via email to: bsmith@spartan-investors.com

E-cc: Lydia Baldwin, U.S. Army Corps of Engineers
Steven Sundin, City of Bellingham
Ed Miller, Miller Environmental Services, LLC
Erin Hanlon Brown, Ecology
ECYREFEDPERMITS@ECY.WA.GOV

In The Matter of Issuing an Administrative Order
To Spartan Investment Group, LLC (Brad Smith)
pursuant to RCW 90.48.120 and WAC 173-201A

Spartan Investment Group, LLC
Attn: Brad Smith
17301 West Colfax Avenue, Suite 120
Golden, CO 80401

Order No.	23609
Corps Reference No.	NWS-2024-176
Site Location	Pacific Highway Storage Project, located within wetlands, Bellingham, Whatcom County, Washington.

This is an Administrative Order requiring Spartan Investment Group, LLC (Brad Smith) 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 September 23, 2024, concluding that Swale 1, and Wetlands A/B, H, I, J, and K are not waters of the U.S. On September 27, 2024, Ecology received a request to fill 0.418 acres and indirectly impact 0.098 acres of non-federally regulated wetlands, which are waters of the state, to construct Pacific Highway Storage Project in Whatcom County. The project is located at 4054 and 4072 Pacific Highway, Section 11, Township 38 N., Range 02 E., Whatcom County, within Water Resource Inventory Area (WRIA) 1 – Nooksack.

This Administrative Order authorizes fill of 0.418 acres and indirect impact to 0.098 acres of Category III and IV wetland impacts at the project location. Mitigation for this proposal will consist of purchase of 0.4 credits from the Lummi Nation Wetland and Habitat Mitigation Bank, and onsite enhancement of approximately 8,824 square feet of wetland and 8,885 square feet of wetland buffer for a total area of mitigation of approximately 17,709 square feet, and all other actions as proposed in the “Revised Critical Areas Mitigation Plan (Wetlands and Habitat Conservation Areas) For Pacific Highway Storage Project 4054 & 4072 Pacific Highway,” dated September 16, 2024, and the “Mitigation Plan Addendum for 4054 & 4072 Pacific Highway (Parcel 380211-313040 and 380211-293038), Bellingham, Washington,” dated February 21, 2025.

For purposes of this Order, the term “Project Proponent” shall mean Spartan Investment Group, LLC (Brad Smith) 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 September 27, 2024, 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 chris.luerkens@ecy.wa.gov. Any submittals shall reference Order No. 23609.
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 project engineers, contractors, and other workers at the project site with authority to direct work 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) before construction begins.
7. To transfer this Order to a new owner or operator the Project Proponent shall:
 - a. Complete a Request for Transfer of Order with a specific transfer date of the Order's obligations, coverage, and liability and submit it to Ecology per condition A.2. Link to form: <https://apps.ecology.wa.gov/publications/SummaryPages/ECY070695.html>;
 - b. Provide a copy of this Order to the new owner or operator; and

- c. The transfer is not considered valid until the Project Proponent receives written notification from Ecology that the transfer has been approved.
8. The Project Proponent is responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, local or tribal authorities.

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.
2. If U.S. Army Corps of Engineers (Corps) determines that impacts to Wetlands A/B, H, I, J, and/or K require a Federal permit, the Project Proponent shall inform Ecology immediately in order to receive the appropriate authorization.

C. Wetland Mitigation Conditions:

1. The Project Proponent shall mitigate wetland impacts as described in the "Revised Critical Areas Mitigation Plan (Wetlands and Habitat Conservation Areas) For Pacific Highway Storage Project 4054 & 4072 Pacific Highway" prepared by Miller Environmental Services, LLC, and dated September 16, 2024, and the mitigation plan addendum prepared by Miller Environmental Services, LLC, and dated February 21, 2025 (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.

Mitigation bank credits

3. Prior to impacting wetlands, the Project Proponent shall submit to Ecology documentation from the bank sponsor verifying the purchase of wetland mitigation bank credits (credits) from the Lummi Nation Wetland and 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. Unless otherwise authorized by this Order, the Project Proponent shall complete the purchase of credits before impacting wetlands. Otherwise, Ecology may require the Project Proponent to provide additional compensation to account for additional temporal loss of wetland functions.

Onsite wetland mitigation

5. The Project Proponent shall have a qualified wetland professional at the wetland mitigation site to supervise during construction and planting.
6. 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.
7. If the mitigation site 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 Pacific Highway Storage Project.
- b. Onsite mitigation.

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 Pacific Highway Storage Project and construction of onsite mitigation are complete.

8. 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.
9. 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.

10. 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.
11. The Project Proponent shall not use polyacrylamide at the mitigation site.
12. The Project Proponent shall not use hay or straw on exposed or disturbed soil at the mitigation site, unless otherwise approved by Ecology.
13. 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.
14. 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.
15. 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.
16. 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.
17. The Project Proponent shall place permanent signs at the mitigation area's boundaries, including buffers, to mark the area as a wetland mitigation site per Section 7.7.9 (Site Protection) and Sheet W2 of the Mitigation Plan.

18. After completing construction and planting of the mitigation sites, 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.19.
19. The Project Proponent shall follow the steps below to record a legal site protection mechanism for the onsite mitigation area:
 - a. Request a template from Ecology or use an appropriate alternative to develop a legal site protection mechanism.
 - b. Send the draft site protection mechanism to Ecology for review prior to recording.
 - c. Record the legal site protection mechanism with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.
 - d. Record the legal site protection mechanism 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 legal site protection mechanism to Ecology with the As-Built Report (see C.18).

Monitoring and Maintenance

20. 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.
21. The Project Proponent shall monitor the mitigation site for a minimum of 5 years.
22. The Project Proponent shall submit to Ecology (see A.2) monitoring reports documenting mitigation site conditions annually. The monitoring reports must:
 - a. Be submitted by December 31 of each monitoring year.

- b. Include the information listed in Attachment C (Information Required for Monitoring Reports).
- 23. 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.
 - 24. 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.
 - 25. 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.
 - 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.
 - 27. The Project Proponent's obligation to compensate for wetland impacts under Condition C.1 is not met until the Project Proponent has received written notice from Ecology that the obligation is 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 information 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 by mail, in person, or by email (see addresses below).

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Address and Location Information

Filing with the PCHB

For the most current information regarding filing with the PCHB, visit: <https://elaho.wa.gov/> or call: 360-664-9160.

Service on Ecology

Street Address:

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

Mailing Address:

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

E-Mail Address:

ecologyappeals@ecy.wa.gov

Contact information

Please direct all questions about this Order to:

Chris Luerkens
Department of Ecology
Bellingham Field Office

(360) 410-4807

Chris.luerkens@ecy.wa.gov

More information

- **Pollution Control Hearings Board Website**
<https://elaho.wa.gov/>
- **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 24 day of April, 2025 at the Department of Ecology, Shoreline, Washington



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

Attachment A

Statement of Understanding Administrative Order Conditions

Pacific Highway Storage Project

Administrative Order No. 23609

As the Project Proponent for Pacific Highway Storage Project, I have read and understand the conditions of Washington State Department of Ecology Order No. 23609, and any permits, plans, documents, and approvals referenced in the Order. 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

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 Project Proponent
 - 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

Information Required for Monitoring Reports

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 Project Proponent
 - 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.