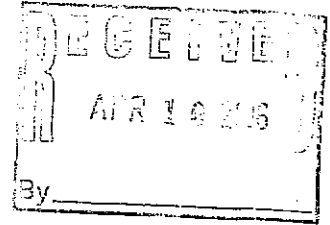




REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755



April 7, 2006

Regulatory Branch

National Marine Fisheries Service
Mr. Steve Landino, Chief
Habitat Branch
510 Desmond Drive Southeast, Suite 103
Lacey, Washington 98503-1263

U.S. Fish and Wildlife Service
Ms. Pam Repp, Division Manager
Ecological Services
510 Desmond Drive Southeast, Suite 102
Lacey, Washington 98503-1263

Reference: Informal Consultations
And Request for Final Concurrence

Ladies and Gentlemen:

We have enclosed the following biological evaluations (BE) for your review:

200001502, IDC Enterprises (Uhrich)
200600098, Clear Valley Environmental Farm, LLC (Perry)
200600138, Redmond Public Works (Rahman), for NMFS only
200500082, Nigel Thompson and Alan Black (Liera)
200501250, Truesdell, Smith, Dow and Swing Pt LLC (Liera)

We have also enclosed the following Reference Biological Evaluation Specific Project Information Forms (RBE SPIF) for your review. These proposed projects meet most of the Conservation Measures for the Regional General Permit 1, 3, 4, 5 or 6 and/or the Phase I Programmatic Consultation.

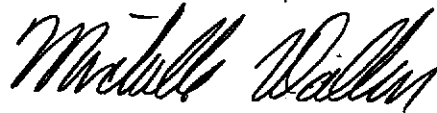
200600102, Cameron and Linda Myhrvold (Powell)
200600221, Rachuna, Thaddeus, (Powell)
200501292, Washington State Parks and Recreation (Liera)
200501235, Jacobson, S&J and T&J Evans (Liera)

In accordance with informal consultation procedures under Section 7 of the Endangered Species Act (ESA), we request your concurrence with our determinations of "not likely to adversely affect" listed species and designated critical habitat under your jurisdiction. To each BE we have attached a Memorandum for the Services (MFS) that documents our determinations of effect.

If you find a project is "likely to adversely affect" listed species or designated critical habitat, this letter will serve as our request to initiate formal consultation. If formal consultation is required, we request that you submit a draft biological opinion (BO) to us at your earliest convenience so that we can review the BO's mandatory terms and conditions with the applicant. In turn, we will provide comments to you concerning the feasibility and enforceability of the terms and conditions.

A copy of this letter, the MFS, and an information paper entitled *Endangered Species Act Consultation Process* will be furnished to the above-listed applicants. If you have any questions or comments concerning a BE/RBE SPIF or MFS please contact the assigned project manager directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Walker". The signature is fluid and cursive, with the first name "Michelle" and last name "Walker" clearly distinguishable.

Michelle Walker
Chief, Regulatory Branch

Enclosure

MEMORANDUM FOR THE SERVICES (MFS)**CENWS-OD-RG****Re: Endangered Species Biological Evaluation Review****Reference Number: 200600098****Applicant's Name: Clear Valley Environmental Farm, LLC****Project Manager: Randel Perry****Date: March 30, 2006**

- I. Project Purpose, Description, and Location.** The proposed project is located in Nookachamps Creek approximately 1.5 miles northeast the urban center of Mount Vernon, Skagit County, Washington in Section 10, 11, 14 and 15, Township 34N, Range 4E.

The project includes the following elements:

- A. Restoration of reaches of the mainstem of Nookachamps Creek, the east fork of Nookachamps Creek, and associated floodplain wetlands. Proposed project will restore 13,000 feet of existing stream channel and riparian habitat, construct 9720 feet of new high-flow channel and restore 340 acres of palustrine emergent shrub-scrub and forested wetlands.

- B. An additional 81 acres of 150-foot buffer will be planted and preserved.

The purpose of the project is to restore reaches of the main stem of Nookachamps Creek and set up a wetland/habitat mitigation bank.

- II. Coordination History.** The U.S. Army Corps of Engineers (Corps) requested additional information from the applicant as detailed in the attached Memorandum for Reference (MFR) dated February 17, 2006. The applicant's response to the MFR is given in the attached addendum dated March 22, 2006.

III. Allowable Work Window.

Species	Start Work Window	End Work Window
PS Chinook/bull trout	July 1	September 30
All Species:	July 1	September 30

- IV. Determination of Effect.** The Corps has determined that the proposed project will have the following effects on listed species:

- A. *Puget Sound chinook*: may affect, not likely to adversely affect
PS chinook critical habitat: may affect, not likely to adversely affect
Coastal-Puget Sound bull trout: may affect, not likely to adversely affect
Bull trout proposed critical habitat: may affect, not likely to adversely affect
Puget Sound Steelhead: no jeopardy

The project will result in increased noise and sediment during construction activities, but the disturbance will be temporary. Work will be done during approved work windows to minimize impacts to salmonids.

B. *Bald eagle*: may affect, not likely to adversely affect

The project will result in increased noise during construction activities, but the disturbance will be temporary. The nearest nest is 0.6 miles away. Distance to the nearest foraging area is greater than a mile away. No pile driving will occur in the project area. No work window restrictions will apply.

V. Biological Evaluation. The biological evaluation prepared by Herrera Environmental Consultants, dated October, 2005 and the addendum dated March 22, 2006 adequately assess the impacts of the proposed project on the species referenced above.

VI. Special Conditions. To ensure the effects of the project will be as determined, the following conditions will be conditions of the Corps permit:

- A. You must implement the ESA requirements and/or agreements set forth in the *Biological Evaluation, Skagit Environmental Bank Habitat Restoration Project, Skagit County, Washington* dated October, 2005 and the addendum dated March 22, 2006 in their entirety. The U.S. Fish and Wildlife Service concurred with a finding of "may affect, not likely to adversely affect" based on this document on [DATE] (USFWS Reference #). The National Marine Fisheries Service concurred with a finding of "may affect, not likely to adversely affect" based on this document on [DATE] (NMFS Reference #).
- B. In order to protect Chinook salmon and bull trout, the permittee may conduct the authorized activities from July 1 through September 30 in any year this permit is valid. The permittee shall not conduct work authorized by this permit from October 1 through June 30 in any year this permit is valid.

VII. Essential Fish Habitat.

In accordance with the Essential Fish Habitat (EFH) requirements of the Magnuson-Stevens Fishery Conservation and Management Act, the Corps has determined that the proposal would not adversely affect EFH for federally-managed fisheries in Washington waters.

April 3, 2006
Date

Marcy Reed
Marcy Reed, BE Reviewer



US Army Corps
Of Engineers
Seattle District

Information Paper

Date:

May 14, 2002

Endangered Species Act Consultation Process¹

In accordance with Section 7 of the Endangered Species Act (ESA), the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch (Corps) shall consult with the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS)² on any proposed application for a Department of the Army permit - including Nationwide Permit - that may affect a federally listed species or its designated critical habitat. Specifics of this consultation process are set forth in 50 CFR Part 402 "Interagency Cooperation - Endangered Species Act of 1973, as Amended". There are two consultation processes under the ESA, informal consultation and formal consultation. You may check the status of the ESA consultation at NMFS via their website - www.nwr.noaa.gov. When entering your Corps reference number, be sure to enter the number in the following format - 2003-4-00976.

Informal Consultation - When the Corps has determined that a proposed activity will not result in an adverse affect³ to a listed species or critical habitat (which leads to a determination of "may affect, not likely to adversely affect") ESA provides a shortened coordination process called "informal consultation". The process is as follows -

Step 1. The Corp initiates consultation with the Services by written request enclosing sufficient biological information, such as a biological evaluation (BE).⁴

Step 2. With a goal of responding within "30 days", the Services review the BE for completeness and then issue a letter of concurrence to the Corps, request additional information/recommend project alterations, or issue a letter of nonconcurrence. The Corps will initiate "formal consultation" if the Services do not respond to the informal consultation. The Corps is working with the Services to develop reasonable timeframes for informal consultations.

Letter of Concurrence. If the Services provide a "letter of concurrence", the Corps will finalize the permit decision.

Request for Additional Information/Recommend Project Alterations. The Services may request additional information from the Corps to clarify the proposed project and its potential impacts or may recommend project alterations to minimize impacts. These requests may occur via a telephone conversation between the Services and the Corps, written requests, or direct coordination with the applicant. Any additional information or project alterations provided by the applicant are sent to the Corps and then forwarded to the Services.

¹The Corps has solicited comments from the USFWS and NMFS on this information paper. Certain processes outlined in this paper are proposed by the Corps, as the lead federal agency, and are not necessarily advocated by USFWS and NMFS.

²USFWS and NMFS are jointly referred to as "the Services".

³"Adverse affect" is defined as when a listed species or designated critical habitat is negatively impacted as a direct or indirect result of the proposed action or its interrelated or interdependent actions. The negative impacts are not insignificant or discountable. [ESA Section 7 Consultation Handbook, by NMFS and USFWS, dated March 1998]

⁴The required biological information for Section 7 Consultation is outlined in 50 CFR 402.12.

Letter of Nonconcurrency. If the Services disagree with the Corps' determination, the Services will work informally with the Corps and the applicant to come to a resolution on the non-concurrence. If informal resolution is not possible, the Services will issue a letter of nonconcurrency. The letter may include recommended project alterations to minimize impacts. If the project is not revised by the applicant or via Corps permit conditions, the Corps will inform the Services that the determination has been changed to a "may affect, likely to adversely affect" and reference the original request letter to initiate the "formal consultation" with the Services.

Formal Consultation - When the Corps determines that a proposed activity may result in "adverse affects" to listed species or designated critical habitat (a determination of "may affect, likely to adversely affect"), formal consultation is initiated with the Services. The process is as follows –

Step 1. The Corps requests formal consultation with the Services in writing, enclosing a complete initiation package⁵, including biological information such as a BE and a cumulative effects analysis.

Step 2. Within 30 days, the Services respond to the Corps, acknowledging receipt of the consultation request and requesting any missing information needed to complete the "consultation initiation package".

Step 3. Within 90 days from when the "consultation initiation package" is considered complete, the Services can provide a draft biological opinion (BO) upon request by the Corps, with either a "jeopardy" or "no jeopardy" decision. A "jeopardy" decision may include "reasonable and prudent alternatives" (RPAs) to revise the project so that impacts will result in "no jeopardy" of the listed species. A "no jeopardy" decision may include an incidental take statement along with reasonable and prudent measures (RPMs) and terms and conditions necessary to reach an acceptable level of reduced impact on the species.

Step 4. Within 30 days of receipt of the draft BO, the Corps and the applicant review the draft BO and provide comments to the Services. During this review, the Corps and the applicant have the opportunity to discuss terms and conditions and/or revise the project. Often terms and conditions may be negotiated to meet the goal of the Services and the constraints or needs of the applicant.

Step 5. Within 135 days from when the "consultation initiation package" is considered complete, the Services issue a final BO, incorporating any revisions negotiated with the Corps and the applicant during the review of the draft BO.

Step 6. Once the BO is issued, the Corps will finalize its permit decision, which will include the BO by reference. If a "jeopardy" BO is issued, the Corps is likely to deny the permit.

NOTE: The above timelines for the Services are established in 50 CFR 402. However, the Corps has no authority to enforce these timeframes. Generally, the Corps holds permit decisions until the ESA consultation has been completed.

⁵ The "complete initiation package" is defined in 50 CFR §402.14(d).