

United States Department of the Interior



FISH AND WILDLIFE SERVICE

Western Washington Fish and Wildlife Office 510 Desmond Dr. SE, Suite 102 Lacey, Washington 98503

In Reply Refer To: **1-3-06-I-0273**

Michelle Walker, Chief Regulatory Branch Seattle District, Corps of Engineers ATTN: Regulatory Branch (Perry) P.O. Box 3755 Seattle, Washington 98124-3755

Dear Ms. Walker:

Subject: COE #200600098; Clear Valley Environmental Farm, LLC

This is in response to your request for consultation dated April 7, 2006, and enclosed Biological Evaluation for the proposed wetland and stream restoration work on the Clear Valley Environmental Farm. The proposed action is being conducted to serve as a mitigation bank for future highway projects in the area. The site was a dairy farm located along the East Fork and mainstem of the Nookachamps Creek in Skagit County, Washington (T34N, R04E, Sections 10, 11, 14 and 15).

The applicant is proposing to restore approximately 13,000 feet (2.5 miles) of stream channel and floodplain habitat by filling agricultural drainage ditches, constructing 9,720 feet of new offchannel habitat, installing 4 engineered log jams, restoring 340 acres of palustrine and forested wetlands, and planting 81 acres of trees in the riparian buffer. The site will be protected from development and other incompatible uses with a permanent conservation easement. Work will be conducted in three phases and is expected to take approximately 5 years to complete.

Phase I is scheduled to begin in the summer of 2007 and will include filling approximately 8,550 linear feet of drainage ditches and constructing an engineered log jam in the mainstem and three engineered log jams in the East Fork of the Nookachamps. Phase II, scheduled to be conducted in 2009, will include grading and leveling the site to restore hydrologic connection in the floodplain and constructing new side channels in areas where they historically occurred. Phase III, scheduled for 2011, will include final hydrologic connections and planting of native vegetation.



All in-stream work will be conducted during the summer low flows and will be limited to the approved work window (June 15 through September 30). Construction equipment will include the use of excavators, backhoes, front-end loaders, vibratory pile driver, and dump trucks. The site will be accessed using existing agricultural roads. All exposed areas will be seeded and/or planted before the winter rains to prevent erosion. Construction of the engineered log jams will require re-routing the stream around the work area to minimize turbidity. New channel segments will be constructed in the dry and allowed to stabilize for a season before being connected to the Creek.

The letter requests our concurrence with your finding that the project "may affect, but is not likely to adversely affect" the bull trout (*Salvelinus confluentus*) and the bald eagle (*Haliaeetus leucocephalus*). The project is not in designated critical habitat for the bull trout. This request was submitted in accordance with section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Based on the information provided, we have concluded that effects to the federally listed bull trout and bald eagle associated with the proposed project would be insignificant or discountable. Therefore, we concur with your "may affect, not likely to adversely affect" determination for these species. Our conclusion is based on the following rationale.

Bull Trout

Bull trout likely use the lower Nookachamps seasonally (fall/winter) for foraging and overwintering. There is one record of a subadult bull trout in Lake Creek, a tributary to Nookachamps in 1994 (pers. com. C. Kraemer). However, according to the Biological Evaluation, there are no records of bull trout observations during annual salmon spawning surveys conducted by the Washington State Department of Fish and Wildlife.

Nookachamps Creek is on the Washington Department of Ecology's 303(d) list of impaired waters for high summer temperatures and low dissolved oxygen. Temperatures in the mainstem can reach 20° C and may be as high as 24° C in the East Fork during the low flow period. The action area is 1.5 miles upstream of the Skagit River, which is used year-round by bull trout. Project-related turbidity is not expected to reach the river because most of the suspended sediments will settle out in Nookachamps Creek. Furthermore, because a vibratory pile driver will be used to install the wooden anchor pieces for the engineered log jams, no harmful effects from pile driving are anticipated.

Because the in-water work will be conducted during the time of year when oxygen levels are low and temperatures are unsuitable for bull trout, it is unlikely that they will be present in the action area during construction. Thus, effects to bull trout from project-related activities are considered discountable. The project will improve habitat conditions for all fish in the action area. Thus long-term effects to bull trout and their prey are considered beneficial.

Bald Eagle

The proposed action will not result in the loss or modification of suitable nesting, roosting, or

perch tree habitat for bald eagles. There is one active bald eagle territory adjacent to Barney Lake at the confluence of the East Fork and mainstem Nookachamps. An equipment access route and new side channel site will be located just across the creek from the nest site (within 0.1 mile). Although the bald eagles that occupy this territory are accustomed to agricultural operations during the nesting season, construction activities will be close to the nest, are stationary, and are longer in duration than farming activities such as mowing. Therefore, the site will be monitored by a qualified biologist to ensure that project-related activities do not cause disturbance to the eagles. Construction will be sequenced such that operations in the vicinity of the nest will occur late in the nesting season and will be halted if the eagles show signs of agitation. Because the nest site will be monitored and activities adjusted to avoid disturbance, effects to nesting bald eagles are considered insignificant.

Bald eagles forage along the Nookachamps and Skagit River all year. Since the water quality is often poor in Nookachamps Creek, the Skagit River provides the best foraging opportunities during the summer. Because foraging opportunities are limited in the action area, construction activities will be conducted during daylight hours, and sound levels associated with pile driving and/or equipment operations will not reach harmful levels, effects to foraging bald eagles are considered insignificant.

This concludes informal consultation pursuant to the regulations implementing the Endangered Species Act (50 CFR 402.13). This project should be re-analyzed if new information reveals effects of the action that may affect listed species or critical habitat in a manner, or to an extent, not considered in this consultation. The project should also be re-analyzed if the action is subsequently modified in a manner that causes an effect to a listed species or critical habitat that was not considered in this consultation, and/or a new species is listed or critical habitat is designated that may be affected by this project.

If you have any questions about this letter, please contact Martha Jensen at (360) 753-9000 or Tom McDowell at (360) 753-9426, of this office.

Sincerely,

/S/10/05/06/T McDowell/

Ken S. Berg, Manager Western Washington Fish and Wildlife Office

cc: WDFW Region 4