



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

January 12, 2010

Wildlands of Washington, Inc  
Attn: Sky Miller  
1800 4<sup>th</sup> Street, Suite A  
Marysville, WA 98270

RE: First Amendment to Administrative Order #6252 for U.S. Army Corps of Engineers  
(Corps) Reference #NWS-2008-39-NO to construct a flood prevention dike, Wetlands,  
Mount Vernon, Skagit County, Washington

Dear Mr. Miller:

Enclosed is an amendment to the Water Quality Certification issued on December 8, 2008, for  
the above project.

If you have any questions, please contact Paul Anderson at (425) 649-7148. The enclosed  
Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "Geoff Tallent".

Geoff Tallent, Section Manager  
Northwest Regional Office  
Shorelands and Environmental Assistance Program

GT:psa:ca

Enclosure

By certified mail 7007 0220 0004 6659 1740

e-cc: Randel Perry, U.S. Army Corps of Engineers  
Jana Hanson, City of Mount Vernon  
[ecyrefedpermits@ecy.wa](mailto:ecyrefedpermits@ecy.wa)



IN THE MATTER OF GRANTING A ) **ORDER #6252 First Amendment**  
WATER QUALITY ) **Corps Reference No. NWS-2008-39-NO**  
CERTIFICATION TO Nookachamps, ) Hoag Road Dike; Wetlands, Mount Vernon,  
LLC in accordance with 33 U.S.C. 1341 ) Skagit County, Washington.  
(FWPCA § 401), RCW 90.48.120, RCW )  
90.48.260 and Chapter 173-201A WAC )  
)

TO: Nookachamps, LLC  
Attn: Sky Miller  
1800 4th Street, Suite A  
Marysville, WA 98270

This amendment is to the above-referenced Administrative Order approved and issued by the Department of Ecology (Ecology) on December 8, 2008.

This amendment is issued under the provisions of Chapter 90.48 RCW and Chapter 173-201A WAC.

Administrative Order #6252 is hereby amended as follows:

**1. Conditions C1-C17 and C19 that read:**

- C1. The Applicant shall implement the mitigation plan as described in the *Onsite Mitigation Plan for the Hoag Road Dike Project* prepared by *Wildlands of Washington, Inc*, dated *September 11, 2008* (hereafter referred to as the "mitigation plan") except as modified in this Order.
- C2. The Applicant shall submit any changes to the mitigation plan in writing to Ecology (see A.2) for review and approval before work begins or when problems occur during construction requiring plan changes.
- C3. To ensure proper installation, the Applicant's wetland professional must supervise and inspect all restoration site construction and planting.

Implementation

- C4. Within 90 days of completing construction and planting at the site, the Applicant shall submit an as-built report with maps to Ecology. The as-built report must:
  - a. Document site conditions at Year Zero;
  - b. Be submitted to Ecology per Condition A.2 with one electronic file and one hard copy;
  - c. Include the information listed in Attachment B;
  - d. Included documentation of a recorded conservation easement.
- C5. If the mitigation project is not completed within 13 months of this Order's date, the Applicant shall submit a written construction status report and submit status reports every

12 months until construction and planting are complete and the final as-built report is submitted.

- C6. Within 90 days of completing construction and planting, the Applicant shall record a conservation easement for the preserved area, a copy of Ecology's Order, and a copy of the as-built report. These documents must be recorded with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.

Monitoring and Maintenance

- C7. The Applicant shall water and maintain all plantings at the restoration site to meet the mitigation plan's performance standards.
- C8. The Washington State Noxious Weed Control Board requires control of purple loosestrife (*Lythrum salicaria*) and several species of knotweed (Bohemian knotweed [*Polygonum x bohemicum*], giant knotweed [*P. sachalinense*], Himalayan knotweed [*P. polystachyum*], and Japanese knotweed [*P. cuspidatum*]), all Class B noxious weeds. Any of these species, if present, shall be eradicated. Weeding and maintenance shall be performed as necessary to ensure that cover of these species is maintained at zero percent throughout the monitoring period.
- C9. The Applicant shall monitor the restoration site for a minimum of ten (10) years. Following submittal of as-built drawings (Year 0), monitoring shall occur in Year 1, Year 2, Year 3, Year 5, Year 7, and Year 10. The Applicant shall use the monitoring methods described in the approved mitigation plan, or as revised and approved by the Department. The following performance standards shall be met for the specified monitoring years:
- a. For hydrology in the wetland mitigation area, saturation to the soil surface or inundation for a minimum of 30 days during the growing season in each monitoring year;
  - b. Emergent vegetation within the rehabilitated wetland shall be composed of at least two species for each monitoring year, of which no species shall represent more than 50% cover. Native emergent plants within the rehabilitated wetland shall have a minimum ground cover of 30% in Year 3, 50% in Year 5, and 80% in Year 7 and Year 10;
  - c. Scrub-shrub vegetation planted within the buffer shall have a minimum 80% survival for the first two monitoring years. Native scrub-shrub plants within the buffer shall have a minimum ground cover of 30% in Year 3, 50% in Year 5, and 70% in Year 7 and Year 10;
  - d. Trees planted within the buffer shall have a minimum 80% survival for the first two monitoring years. Native trees within the buffer shall have a minimum ground cover of 30% in Year 3, 50% in Year 5, 70% in Year 7, and 80% in Year 10.
- C10. The Applicant shall submit monitoring reports to the Department (one on compact disc or via e-mail, and one hard copy [see A2. above]) documenting site conditions at the mitigation site for each monitoring year. The monitoring reports must contain, at a minimum, the information in Attachment C.

The Applicant shall submit the Year One monitoring report no sooner than 12 months and no later than 24 months after submitting the as-built report.

- C11. The Applicant shall submit the reports for the remaining monitoring years (years two, three, five, seven and ten) no later than October 31st of the respective monitoring year.
- C12. The Applicant shall implement the approved mitigation plan's contingency measures if goals, objectives, and performance standards are not being met.
- C13. The Applicant shall consult with the Department if unidentified contingency measures are necessary.
- C14. When necessary to meet the performance standards, The Applicant shall replace dead or dying plants during the first available planting season with the same species or a native plant alternative appropriate for the location and note species, numbers, and approximate locations of all replanted materials in the subsequent monitoring report.
- C15. For monitoring years five and ten, the Applicant shall use the *1997 Washington State Wetlands Identification and Delineation Manual* (or as updated) to delineate all compensatory wetlands and include delineation information (e.g. data sheets, maps, etc.) in the monitoring reports.
- C16. At the end of the monitoring period, the Applicant shall use the annotated *August 2004 Washington State Wetlands Rating System for Western Washington* (or as updated) to rate all wetlands on the mitigation site, and include the information in the monitoring report.
- C17. If The Applicant has not met all the conditions and performance standards at the end of the monitoring period, the Department may require additional monitoring and/or additional wetland restoration.
- C19. The Applicant's responsibility to complete the required restoration as set forth in Condition C.1 of this order will not be considered fulfilled until they have received written verification from Ecology.

**Are replaced with:**

- C1. Project mitigation shall be the transfer of sufficient credits from the Nookachamps Wetland Mitigation Bank to compensate for the filling of 0.33 of an acre of palustrine emergent Category III wetland.
- C2. Prior to impacting wetlands, including buffers, associated with the construction of the project, the Applicant shall submit the following to Ecology:
  - a. Proof of Mitigation Bank Credit Transfer: Documentation that credits applied to the project have been registered, with the Corps number and Ecology Order number assigned to this project and permit issuance dates at the Skagit County Auditor's office.

No other conditions or requirements of the above-mentioned Order are affected by this Amendment. The Department of Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if it appears necessary to further protect the public interest.

Failure to comply with this amendment may result in the issuance of civil penalties or other actions whether administrative or judicial, to enforce the terms of this amendment.

### **Appeal Process**

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the “date of receipt” of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the “date of receipt” of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). “Date of receipt” is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

#### **1. To file your appeal with the Pollution Control Hearings Board**

Mail appeal to:

The Pollution Control Hearings Board  
PO Box 40903  
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board  
4224 – 6th Ave SE Rowe Six, Bldg 2  
Lacey, WA 98503

#### **2. To serve your appeal on the Department of Ecology**

Mail appeal to:

The Department of Ecology  
Appeals Coordinator  
P.O. Box 47608  
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology  
Appeals Coordinator  
300 Desmond Dr SE  
Lacey, WA 98503

#### **3. And send a copy of your appeal to:**

Department of Ecology  
Northwest Regional Office  
Attn: Rebekah Padgett  
3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008

For additional information visit the Environmental Hearings Office Website:

<http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:

<http://www1.leg.wa.gov/CodeReviser>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated January 12, 2010 at Bellevue, Washington.



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Geoff Tallent, Section Manager  
Shorelands and Environmental Assistance Program  
Department of Ecology  
State of Washington