



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

June 21, 2007

**REGISTERED MAIL**  
**RB 670 438 775 US**

Ms. Jennifer Aylor  
Nookachamps, LLC  
1800 4<sup>th</sup> Street, Suite A  
Marysville, WA 98270

**RE: Water Quality Certification Order #4410 (Corps Reference #200400801) for the Nookachamps Wetland Mitigation Bank to create, establish, and enhance wetlands and other aquatic resources on approximately 313 acres connecting and adjacent to the Skagit River located in Skagit County, Washington.**

Dear Ms. Aylor:

On July 6, 2004, Nookachamps, LLC submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification for the Nookachamps Wetland Mitigation Bank. The initial application was withdrawn and resubmitted with no changes on June 30, 2005 and again on June 23, 2006. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) and Ecology for the above-referenced project on May 13, 2005. The Ecology portion of the public notice was issued pursuant to the provisions Chapter 173-225 WAC. On March 15, 2007 the Corps issued a Nationwide Permit (NWP) #27 for the project.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work proposed in the resubmitted JARPA, and supplemental materials reviewed and approved by Ecology and the Mitigation Banking Review Team (MBRT), complies with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act (CWA), as amended, and other appropriate requirements of State law. This certification is subject to the conditions contained in the enclosed Order. This letter also serves as the State response to the Corps of Engineers.

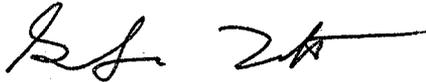
Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the Nookachamps, LLC's determination that the proposed work is consistent with the approved Washington State Coastal Zone Management Program (CZMP). This concurrence is based upon the Nookachamps, LLC's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.



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If you have any questions, please contact Christina Merten, the Wetland Banking Specialist and Federal Permit Coordinator for this project, at (425) 649-7007 or [chme461@ecy.wa.gov](mailto:chme461@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



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

Enclosure

cc: Gretchen Lux, Ecology  
Gail Terzi, Corps of Engineers  
Randel Perry, Corps of Engineers  
Joan Cabreza, EPA Region 10  
Jeffrey Kamps, WDFW  
Betsey Stevenson, Skagit County  
Ann Bylin, Skagit County  
Jana Hansen, City of Mount Vernon  
Larry Wasserman, Skagit River System Cooperative  
Betty Norton, Skagit Conservation District

e-cc: Penny Keys, Ecology  
Loreé Randall, Ecology

<b>IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Nookachamps LLC</b> in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	) <b>ORDER # 4410</b> ) <b>Corps Reference No. 200400801</b> ) Create a 313-acre wetland mitigation bank by ) creating, rehabilitating, and enhancing wetlands, ) uplands, and channel areas. The project will be ) connecting directly to the Skagit River located in ) Skagit County, Washington.
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TO: Nookachamps LLC  
1800 4<sup>th</sup> Street, Suite A  
Mount Vernon, WA 98270

On July 6, 2004 Nookachamps, LLC submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) and Ecology for the above-referenced project on May 13, 2005. The Ecology portion of the public notice was issued pursuant to the provisions Chapter 173-225 WAC. The applicant withdrew and resubmitted the JARPA to Ecology with no changes on June 30, 2005 and again on June 23, 2006.

The proposed project entails constructing and operating a 313-acre wetland mitigation bank. The project involves 1.17 acres of channel creation, 64.57 acres of wetland establishment, 136.4 acres of riparian floodplain forest establishment, 34.37 acres of wetland enhancement, 4.49 of wetland preservation, and 45.4 acres of perimeter buffer. One of the channel creation areas will be connecting directly with the Skagit River. The channel creation, wetland establishment and enhancement activities involve grading of existing wetlands, upland agricultural, and pasture areas. A primitive public trail will be constructed along the western edge of the property. This trail includes a 50-foot-wide protection buffer on both sides of the trail. The site is currently bordered on the west by the Skagit River; on the south by a drainage ditch maintained by Diking District #20, as well as a church and senior living development; on the east is agricultural land and the urban growth boundary; and to the north by agricultural fields. The entire project boundary is protected from current land use by buffers and the entire project is protected in perpetuity by a conservation easement. The *Nookachamps Wetland Mitigation Bank Mitigation Bank Instrument* (MBI) serves to outline and describe the legal agreements made by the permittee and signatories of this bank as well as the detailed implementation plan for the establishment and operation of the Nookachamps Wetland Mitigation Bank.

No physical address has been assigned for the property where work is to be performed. The general project location is north of Hoag Road, West of Francis Road, and East of the Skagit River. The proposed work will take place within the city limits of Mount Vernon, Washington as well as in unincorporated Skagit County; adjacent to the Skagit River. The bank site is located in Sections 4, 5, 8 and 9; Township 34 North; Range 4 East; in Water Resource Inventory Area 3 (Lower Skagit/Samish Watershed).

**AUTHORITIES:**

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §1311, 1312, 1313, 1316, and 1317 (FWPCA § 301, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

**WATER QUALITY CERTIFICATION CONDITIONS:**

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve Nookachamps, LLC from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

**A. General Conditions**

1. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: Wetland Banking Specialist/Federal Permit Coordinator, Shorelands and Environmental Assistance Program, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008. Any submittals shall reference Order No. 4410 and Corps No. 200400801.
2. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 26, 2006, and supplemental materials reviewed and approved by

Ecology and the Mitigation Banking Review Team (MBRT). The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.

3. Within 30 days of receipt of an updated JARPA Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
4. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
5. 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 lead workers, and state and local government inspectors.
6. The Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that 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 water quality.
8. The Applicant 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 Applicant 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.
9. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
10. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation for each day of continuing noncompliance.

**B. Water Quality**

1. This Order does not authorize temporary exceedances of the turbidity standard beyond the limits established in WAC 173-201A-200(1)(e)(i)(C).

**C. Stormwater**

1. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
2. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters. All fueling areas will be provided with adequate spill containment. During fueling and servicing of cranes, BMPs shall be in place to contain any spill of petroleum products.

**D. Construction Conditions**

1. The Applicant shall comply with all stormwater requirements within the National Pollutant Discharge Elimination System (NPDES) Stormwater General Permit for Construction Activity for this project (Permit #SO3-006279).
2. All work in and near the water shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMP's) suitable to prevent exceedances of state water quality standards shall be in place before starting clearing, filling and grading work and shall be maintained throughout construction.
3. The project shall be clearly marked/staked prior to construction. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Sensitive areas and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. Equipment shall enter and operate within the marked clearing limits corridors and stockpile areas.
4. All excess excavated material shall be stored in only those locations designated in the *Nookachamps Wetland Mitigation Bank Mitigation Bank Instrument* (MBI). Material storage shall also be in accordance with Permit Number SO3-006279.

### **E. Mitigation Bank Monitoring**

1. Project activities shall be achieved through measures described in the following documents, except as modified by this Order:
  - *Nookachamps Wetland Mitigation Bank Mitigation Bank Instrument (MBI)*
2. No mitigation credits associated with the work on this project will be released for sale or transfer until the MBI is approved by Ecology and the Corps of Engineers and all performance standards associated with Objective 1 in the MBI are met.
3. Monitoring will be conducted in accordance with Appendix F of the MBI.

### **F. Reporting Requirements**

1. A detailed "as built" report shall be prepared after bank grading is complete and after bank planting is complete showing any variances from the final wetland mitigation bank plan. The "as-built" shall be the baseline document used for all future monitoring of the mitigation project. It shall include all data as described in Section F.1.1.1 of Appendix F of the MBI.
2. Two (2) copies of the "as-built" report and drawings shall be sent to Ecology's Wetland Banking Specialist/Regional Office Attn: Wetland Banking Specialist/Federal Permit Coordinator at 3190 160<sup>th</sup> Ave SE, Bellevue, WA 98008, within 30 days of completing grading and planting, and in no case later than December 31, 2008. If grading and initial bank plantings have not been completed by December 31, 2008, a project status report shall be submitted in place of the "as-built" report. The status report shall identify when the project will be complete and the "as-built" report submitted.

### **F. Timing Requirements**

1. This Order is not valid until the MBI is approved by all regulatory agencies with authority over the use and operation of the bank.
2. This Order is valid until all compliance requirements as outlined in the MBI and in this Order have been met.
3. In-water work shall be subject to timing limitations imposed by Washington Department of Fish and Wildlife (WDFW). Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

### **G. Notification Requirements**

1. The Applicant shall provide written notification (FAX, e-mail, or mail) to Ecology's Regional Office Wetland Banking Specialist/Federal Permit Coordinator in writing at least three (3) days prior to the start of any grading and at least three (3) days prior to the start of initial planting activities. Notification can take place by FAX to (425) 649-7098, by e-mail to [chme461@ecy.wa.gov](mailto:chme461@ecy.wa.gov), or in writing to Ecology Northwest Regional Office, 3190 – 160<sup>th</sup> Avenue SE, Bellevue, WA 98008.
2. The Applicant shall provide written notification to Regional Office Wetland Banking Specialist/Federal Permit Coordinator in writing within fourteen (14) days after completion of grading and within fourteen (14) days after completion of initial planting activities.

**NOTE:** These notifications shall include the Applicant's name, project name, project location, the number of this Order, contact and contact's phone number.

### **H. Emergency/Contingency Measures**

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
  - a) Cease operations that are causing the compliance problem.
  - b) Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
  - c) In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
  - d) In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.

- e) Immediately notify Ecology's Northwest Regional Spill Response Office at (425) 649-7000 of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.
  - f) Submit a detailed written report to Ecology's Wetland Banking Specialist/Federal Permit Coordinator and Ecology's Water Quality Program within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information. Addresses and phone numbers for notification of Ecology's Water Quality Program are found within the Construction Stormwater General Permit, Permit Number SO3-006279.
3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands.
  4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology's Northwest Regional Spill Response Office at 425-649-7000.

#### **I. Appeal Process**

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this Order.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board  
4224 - 6th Avenue SE, Rowe Six, Bldg. 2  
P.O. Box 40903  
Lacey, Washington 98504-0903

Your appeal must also be served on:  
The Department of Ecology  
Appeals Coordinator  
P.O. Box 47608  
Olympia, Washington 98504-7608.

In addition, please send a copy of your appeal to:  
Federal Permit Appeals Coordinator  
Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

*For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>*

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 6/21/2007 at Bellevue, Washington.

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

**ATTACHMENT A**

**SKYKOMISH HABITAT MITIGATION BANK PROJECT  
Water Quality Certification Order #4410**

**Statement of Understanding of  
Water Quality Certification Conditions**

I have read and understand the conditions of Order #4410 Section 401 Water Quality Certification for the Nookachamps Wetland Mitigation Bank project. I have also read and understand all permits, plans, documents, and approvals associated with the Nookachamps Wetland Mitigation Bank project referenced in this Order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company