

LAND TECHNOLOGIES, INC.

PLANNING • PERMITTING • ENGINEERING



May 12, 2023
City of Arlington
Att: Community & Economic Development
RE: Summary of Consent Decree

CONSENT DECREE establishing buffers on wetlands and streams to Lot 19.

In the mid 1990's Arlington Valley Land Company (AVLC) and others had allegedly been party to grading and clearing on several parcels of land that included Lot 19 now known as Amber Grove. The US Environmental Protection Agency (EPA) brought a Complaint against AVLC and certain individuals that alleged the Defendants violated Section 301(a) of the Clean Water Act (CWA, 33 USC § 1311(a).

The Complaint from the EPA was looking to, for one, *"...require Defendants, at their own expense and at the Direction of th EPA, to restore and/or mitigate the damages caused by their unlawful activities..."*

The Consent Decree is intended to constitute a complete and final settlement with the "Settling Defendants". The Consent Decree was found by the US Court to be a reasonable and fair settlement of the United States against Settling Defendants, and that the Consent Decree adequately protects the public interest in accordance with the CWA and all other federal law.

Of interest is paragraph 12 *"Nothing in this Consent Decree shall Constitute an admission of fact or law by any party"* The Consent Decree is a voluntary decision by both the EPA and "Settling Defendants".

Excerpts from the Decree Important to Lot 19 (Amber Grove)

APPLICABILITY: Obligations of the Consent Decree shall apply and be binding on *"Settling Defendants...and their successors and assigns, any subsequent purchaser of any of the parcels of real property as indentified in Appendix B..."* (underlines added) of the Consent Decree. The entirety of the list of those obligated to the Consent Decree are collectively referred to as "Persons Bound" which does include any future landowners or those that would have authority on the land. Lot 19, now called Amber Grove, was one of several parcels listed as bound by this Decree. Paragraph 5 of the Decree declares that transfer of ownership or other interest in the lands...shall not alter or relieve Settling Defendants of their obligation to comply with all the terms of the Consent Decree. Conditions of said Consent Decree are to go with land.

SPECIFIC PROVISIONS-RESTORATION AND MITIGATION: The Agreement required the Settling Defendants to complete several tasks as part of the obligations under the Decree. They included removing fill from wetlands, some wetland creation, and restricted development on several parcels (making some economically valueless).

An Arlington Valley Land Company Wetland Compensation Plan was prepared by Shapiro and Associates (Environmental Scientist) for the Court through the law firm of Buck and Gordon. This reconstruction of wetlands was monitored and accepted by the Army Corp of Engineers.

PRESERVATION: To ensure that the required work remain undisturbed, the Settling Defendants had to record a copy of the Consent Decree with the "Recorder of Deeds Office, in Snohomish County, Washington." This Decree became a matter of title to each parcel subject to the Decree.

In addition, following completion of work called for in the Work Plan, AVLC had to transfer ownership of all of several parcels and portions of a couple others. Fee Title to these parcels were to be transferred to a conservation group or entity approved by the United States Court (City of Arlington was eventually approved as the receiver by the Court)

NOTICE AND PERMITS FOR ACTIVITIES IN THE NORTERN LOTS OF AVLC'S PROPERTY: The above descriptions applied to Lots 8, 9, 10, 11, and 12. There are Lots 13, 16, 17, 18, 19, and 20 that did not have specific violations alleged against them but were party to the Decree.

AVLC and "Persons Bound" are required to give notice to the Army Corps and EPA before conducting any activities in identified wetlands as well as within fifty feet of the creek(s) in Lots 13, 16, 17, 18, 19, and 20. No notice to the Corps or EPA, and no permit from the Corps shall be required for activities in these same Lots that are outside of wetland boundaries or not within 50 feet of the creek(s) on those lots.

It should be added that Lot 18, which is essentially all wetland was "given" to the City as "*...value to the City of protecting the wetland function in its entire state due to its position in the landscape can mitigate for the buffer averaging on the Stream(s)...*"(sic) (December 2, 2005 email from then City's Community Resource Manager). Lot 18 has been deeded to the City to provide wetland protection and provide mitigation "credits" to Lot 19 (Amber Grove).

Lot 18 along with Lots 9, 10, 11, was transferred to the City of Arlington Tuesday, October 16, 2007. Deeding Lot 18 was additional acreage not required to be transferred to an approved receiver per the Consent Decree. It was done by agreement with the City that it would serve as additional mitigation for future work on Lot 19 (Amber Grove). (email to Bill Blake October 18, 2007 from G. Paul Carpenter).

Mr. Blake stated in a phone conversation with Mr. Carpenter (Anderson Hunter Law Firm) that he would put a letter in the file so that the City could refer to it when someone came in to develop Lot 19 (Amber Grove) (Memorandum December 2, 2005 by G. Paul Carpenter on Phone Conversation with Mr. Blake).

REVIEW SUMMARY

A Complaint was brought against AVLC et al by the EPA for violations of the Clean Water Act. Both parties, the EPA and the Settling Defendants, came to an agreement on how to resolve these issues versus going to court.

Per that agreement, as spelled out in the Consent Decree, the Settling Defendants agreed to perform certain tasks. The Settling Defendants agreed they would remove any purported fill from indicated wetlands, they would create wetlands, and restrict use of several Lots. They were to transfer ownership of several lots to an approved receiver.

The Settling Defendants completed their obligations to this Consent Decree including transferring Title to three lots to the City of Arlington for permanent protection. These were pretty extensive tasks required of the Settling Defendants—all of which they have completed—they clearly held up their end of the Agreement.

The EPA spelled out in that Decree that 6 lots not part of the alleged violations, including Lot 19 (Amber Grove), would not be subject to reporting or permitting activities that are *“outside wetland boundaries or within 50’ of the Creeks running through those lots”*.

By a separate Agreement with the City, it was agreed the City would also receive Lot 18, most of which is covered with a large wetland, in exchange for mitigation credits on development of Lot 19 (Amber Grove).

All Obligations have been honored by the Settling Defendants and Persons Bound per the Consent Decree. In addition, the extra step of transferring Title to the City on an additional parcel was voluntarily added as an exchange for mitigation credits.

AMBER GROVE PROPOSAL

Per the conditions of the Consent Decree, this project could provide a fifty-foot buffer to the Creek(s). This proposal is offering a seventy-five-foot buffer along the development side of the project and one hundred fifty-foot buffers to the other sides of the Creeks or buffers to the property line.

The proposal requires a road to pass into the Creek buffer and bridge crossing over the Stream. Per the Consent Decree, this activity does require Persons Bound to give notice to the Army Corps and EPA before conducting any activities in identified wetlands as well as within fifty feet of the creek(s). Notice will need to be given to the two parties (EPA and Army Corp) and mitigation of the area disturbed by road construction will have to be provided. Mitigation is proposed that will provide 24,542 sf of additional buffer to the Creek(s). This added buffer is between the two one hundred and fifty foot buffers between the two creeks passing through this lot. This will provide a larger continuous block of forested high-value wildlife habitat area.

No work is proposed in wetlands so notice is not required to be provided to the Army Corp and EPA. As an addition, mitigation plantings are to be added along the edges of the Lot 18 wetland, the part that intrudes into this property.

For the past 15 to 20 years mitigation efforts have been completed that, in part, apply to Amber Grove. The Amber Grove proposal is consistent with these pre-mitigation efforts. A significant part of the mitigation efforts were per the Constant Decree with the EPA and a portion was with the City of Arlington—deeding of Lot 18 to the City.

Hope this helps clarify the difficult language in the Consent Decree

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