

## MEMORANDUM

**TO:** Merle Ash  
**FROM:** Jeep Carpenter  
**RE:** Arlington Valley Real Property/Consent Decree for April of 2001  
Parcel 19 - Amber Grove  
**DATE:** May 15, 2023

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Merle,

At your request, in trying to summarize and/or provide a timetable and/or history of issues relating to the acreage of real property one time owned by Arlington Valley Land Company Inc, I would provide the following comments:

### AVLC HISTORY/SUMMARY

1. In the early 1990's, and perhaps it was in the late 1980's, a group of pension plans represented by Tom Collins and I (Anderson Hunter) made a loan to the Arlington Valley Land Company Inc. ("AVLC"), which was primarily owned by, I believe, Mickie Jarvill. The land and/or acreage consisting of rather large parcels was located, as you know, in the northeast quarter of section 14, township 31, north, range 5 East, W.M., which I believe was within the boundaries of the City of Arlington. The property will hereinafter be referred to as the "Arlington Valley Property" and/or merely the "various lots of the Arlington Valley Land Company Property".
2. In the mid 1990's, the United States Environmental Protection Agency ("EPA") and Army Corp of Engineers filed a Complaint in Federal District Court against AVLC, Mickie Jarvill, Ronald Nobach, and Robert Hild doing business as Nobach Pacific, a general partnership and/or Nobach Hill, a general partnership ("Nobach Hild"). Nobach Hild contracted with AVLC to perform various grading and clearing work on several parcels of the Arlington Valley property and according to the Complaint, did so without obtaining the proper and necessary permits. The Complaint alleged, among other things, work within wetland areas, again without obtaining the necessary permits. More particularly, the Complaint filed by the United States of America against the aforementioned individuals and/or entities, alleged violations of the Clean Water Act and more specifically alleged that Hild and Nobach discharged and/or dredged fill material into waters on the property all as described in the Complaint without the authorization of the United States Department of Army Corp. **Anderson Hunter was not a party to the aforementioned Complaint and/or lawsuit.** AVLC, Mickie Jarvill, and Nobach and Hild may sometimes hereinafter be referred to as the "AVLC Defendants" and/or "Settling Parties").

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3. Also, AVLC filed a Petition under Chapter 11 of the United States Bankruptcy Code in August of 1993, and subsequently the Chapter 11 proceeding was converted in March of 1995 to a proceeding under Chapter 7 of the Bankruptcy Code whereby Ms. Susan Stanley was appointed as the Trustee of the assets of AVLC, which included the Arlington Valley Property.
4. Subsequently, the Environmental Protection Agency (“EPA”) and Army Corp negotiated a resolution and/or settlement with the AVLC Defendants relating to the charges, said settlement agreement ultimately set forth in that certain pleading filed under the United States District Court Western District of Washington, Case No. C99-1711C titled “Consent Decree”. As indicated above, the Anderson Hunter parties were not a party to the Consent Decree in that they were not a party to the lawsuit and/or claims filed by the United States of America.
5. Prior to the bankruptcy proceeding filed by AVLC and also prior to the lawsuit filed by the United States of America, the Anderson Hunter Group had commenced a foreclosure proceeding in that it was not being paid. The bankruptcy filing “stayed” this foreclosure and, in addition, the Anderson Hunter Group was not willing to accept title to the Property until the claims between the AVLC Defendants and the United States of America (EPA) were resolved and also any obligations, responsibilities, and/or work to be completed pursuant to the terms of the Consent Decree were satisfactorily completed or, in other words, completed to the approval of the EPA and Army Corp.
6. While we had commenced a foreclosure proceeding in that we were not being paid, we were not willing to accept title to the property until the claims between the AVLC Defendants and the EPA were resolved and also any responsibilities and/or work to be completed pursuant to the terms of the Consent Decree were satisfactorily completed, or in other words completed to the approval of the EPA and Army Corp.
7. As indicated, the AVLC Defendants ultimately agreed to the terms of what is titled the Consent Decree, **which was approved by the United States District Court and found to be a complete and final settlement between the EPA, Army Corp, and AVLC Defendants.** More specifically, the United States District Court found the Consent Decree to be reasonable and a fair settlement of the United States against the AVLC Defendants. With regard to matters that needed to be resolved and/or completed pursuant to the terms and conditions of the Consent Decree, the AVLC Defendants were specifically required to complete the obligations described and/or required in that certain document titled “Arlington Valley Land Company Wetland Compensation Plan” prepared by Shapiro & Associates, Inc., a copy of which was attached as Appendix A to the Consent Decree. The obligations and/or required actions were to require the AVLC Defendants to repair, restore and/or mitigate the damages they caused by their alleged unlawful violations of the Clean Water Act. These obligations required to be completed were described and/or set forth in the Wetland Compensation Plan, again attached as Appendix A to the Consent Decree. Said obligations were in fact completed by the AVLC Defendants and ultimately accepted and/or approved by the EPA and Army Corp.

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8. In addition, there were very particular and specific restrictions relating to several of the parcels of the AVLC property that were and are intended to be binding and enforceable against not only the AVLC Defendants, but **likewise any successor and/or assigns and/or any subsequent purchaser of any of the Arlington Valley Property**. Likewise, to ensure compliance with the terms and conditions of said Consent Decree, as well as to ensure that any successor, assignee, and/or subsequent purchaser would have actual notice of the terms and conditions, said Consent Decree was required to be recorded and was in fact recorded with the Snohomish County Auditor's Office, and was in fact so recorded on or about the 3<sup>rd</sup> day of April, 2001 under Snohomish County Auditor's File No. 200104030169.
9. Once the terms and conditions of the Consent Decree were agreed upon and further, once the obligations and tasks required under the above-described Arlington Valley Land Company Compensation Plan were completed and approved by the EPA, the Anderson Hunter Group agreed to accept ownership of the Arlington Valley Land, which it did pursuant to a Trustee's Non-Merger Quit Claim Deed in Lieu of Foreclosure received from the bankruptcy trustee, namely Susan Stanley, and recorded with the Snohomish County Auditor's Office on April 4, 2001 under Snohomish County Auditor's File No. 200104040625. As such, the Anderson Hunter Group became the owners of what is commonly referred to as Lots 8, 9, 10, 13, 16, 17, 18, 19, and 20 of the Arlington Land Company Property. Further, as indicated above, Anderson Hunter Group's ownership of the Property, in that it was and is a successor in interest to the AVLC, was subject to the terms and conditions of the above-described Consent Decree.
10. Also of significance is the fact that pursuant to the applicable terms and conditions of the Consent Decree, the Anderson Hunter Group, as owners of Lots 9, 10, and 11 of the Arlington Valley Property, was required to transfer ownership of said lots to an entity such as a land trust or municipality so as to ensure that said lots would never be improved and/or developed. In addition, in this regard, the Anderson Hunter Group, as the successor in interest to the Property, was also required and did in fact prepare and record a Declaration of Conservation, Covenants, Conditions, Restrictions, and Easements relating to these three parcels on or about October 11, 2007. In addition, the Anderson Hunter Group deeded ownership of these lots to the City of Arlington so as to ensure that none of these parcels could ever be developed. As such, these parcels would be subject, in perpetuity, to the Conservation Easement and/or Restrictive Covenants, restricting and/or prohibiting the development and/or construction of improvements on any of the same.
11. The Anderson Hunter Group did in fact deed to the City of Arlington, with the approval of the EPA, Lots 9, 10, and 11. In addition, the Anderson Hunter Group deeded Parcel 18 to the City, even though not required by the Consent Decree, partially in consideration of ensuring that a strip of real property 60 feet in width running along the north and western boundary of Lot 10 and the western boundary of Lot 11 could be improved as a material roadway and, further, in consideration of the City committing and/or agreeing to allow the foregoing to be considered as "mitigation credits" for developing other parcels of real property within the Arlington Valley Property, including, specifically, Parcel 19 if and

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- when it might be improved and/or developed. As such, Lots 9, 10, 11, and 18 were, as indicated, deeded to the City of Arlington in October of 2007 and, in addition, a Declaration of Conservation, Covenants, Conditions, Restrictions, and Easements was recorded, prohibiting, among other things, any new development or subdivision of the aforementioned lots in perpetuity.
12. It also should be noted that the applicable terms and conditions of the Consent Decree required that the Anderson Hunter Group and/or any subsequent owner of any parcel was required to deliver an actual copy of the Consent Decree to any entity and/or party purchasing a parcel of the Arlington Valley Land Company Property. The Anderson Hunter Group did sell a number of the parcels and provided and/or delivered copies of the Consent Decree as required. Further, the Anderson Hunter Group, as required, notified the EPA and Army Corp of any subsequent sale of a parcel and confirmed the fact that the buyer had been provided with a copy of the Consent Decree. Also, as indicated above, the Consent Decree was likewise recorded with the Snohomish County Auditor's Office and therefore something that any buyer would receive and/or be notified of in purchasing any parcel of the Arlington Valley Land Company Property.
13. Also, I think it is important to note that notice and permits for activities as described in the Consent Decree specifically apply to Lots 8, 9, 10, 11, and 12 of the Arlington Valley Property. The Consent Decree did not specify any specific violations alleged against Lots 13, 16, 17, 18, 19, and 20, provided, however, said lots and/or parcels were included within the Consent Decree and, more particularly, with regard to Parcel 19, it should be noted that wetlands were identified on this parcel as well as other "non-restrictive lots". However, again, the Consent Decree did not allege and/or describe any violations relating to any work that had been done, if any, on Parcel 19. These wetlands were identified and set forth in Appendix B to the Consent Decree. **However**, notwithstanding the foregoing, the Consent Decree, specifically in paragraph 24, required AVLC Defendants and/or any successor, assignee, or subsequent purchaser to give notice to the Army Corp and EPA before conducting any activities including, but not limited to mowing, cutting, clearing, cultivating, dredging, excavating, farming, filling, dewatering or drainage in any wetlands identified within the above referenced parcels again, as more particularly described in Appendix B to the Consent Decree, as well as lands within 50 feet of the creek running in the various lots, including, without limitation, Parcel 19, again as depicted on Appendix B attached to the Consent Decree. Further, it is important to note that paragraph 24 of the Consent Decree specifically states that, "No notice to the Corp or EPA and no permit from the Corp under Clean Water Act, Section 1404, shall be required for activities in Lots 13, 16, 17, 18, 19, and 20 as shown on the map in Appendix B that are outside of the wetland boundary shown for those lots and not within 50 feet of the creek on those lots."
14. By way of summary, and as described above, the restrictions of the Consent Decree applied specifically to Lots 8, 9, 10, 11, and 12 of the Arlington Valley Property. It's important to note that there were no specific violations alleged against Parcel 19 in the Consent Decree.

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15. It should also be noted that Lot 18, which essentially consisted of wetlands, was given to the City, and partially in consideration for mitigation credits when developing, in part, Parcel 19. Lot 18 was deeded to the City together with, as indicated above, Lots 9, 10, and 11. In addition, the Anderson Hunter Group recorded a Declaration of Conservation Covenants, Conditions, Restriction as Easements relating to the aforementioned lots, which prohibited, in perpetuity, improving and/or developing said lots.

### **REVIEW SUMMARY OF CONSENT DECREE**

1. Pursuant to the Consent Decree, the AVLC Defendants agreed and were required to perform and/or complete obligations and/or certain tasks spelled out under the Arlington Valley Land Company Wetland Compensation Plan prepared by Shapiro & Associates Inc. and attached as Appendix A to the Consent Decree. The obligations and/or tasks were completed and approved by the EPA and Army Corp.
2. Pursuant to the applicable terms of the Consent Decree, title to four different parcels consisting of mostly wetlands was to be transferred to an entity that would ensure that said parcels were never in fact developed and/or improved in the future. This was done and/or completed by the Anderson Hunter Group wherein it deeded Lots 9, 10, 11, and 18 to the City of Arlington. Again, the Anderson Hunter Group included Lot 18 in this transfer in exchange for mitigation credits on the development of Lot 19 (Amber Grove).
3. The Consent Decree specifically requires notice to the Army Corp and EPA before any party conducts activities in identified wetlands as well as within 50 feet of any creek on lots, including, without limitation, Lot 19. It should be noted that the Consent Decree does not require any reporting and/or permitting activities relating to activities “outside wetland boundaries”, said wetland boundaries, again, described in Appendix B to the Consent Decree, or not within 50 feet of any creeks running through those lots.
4. I believe that all of the obligations set forth and/or described in the Consent Decree have been completed and/or honored by not only the AVLC Defendants, but likewise at least the Anderson Hunter Group. In addition, the Anderson Hunter Group provided copies of the Consent Decree to each and every purchaser of any parcels it sold, as well as recorded a Declaration of Conservation Covenants, Conditions, Restrictions, and Easements relating to those parcels described above, namely 9, 10, 11, and voluntarily 18. Further, the Anderson Hunter Group, as described above, included and deeded Parcel 18 to the City of Arlington in exchange for what are commonly referred to as mitigation credits.

### **AMBER GROVE PROPOSAL**

1. I understand the “Amber Grove Proposal” is offering or committing to a 75 foot buffer along the development side of the project and 150 foot buffers to the other sides of the creek or buffers to the property line. As such, in that no work and/or activities will be done within and/or to the identified wetlands on Appendix B, Parcel 19, as well as no work

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and/or activity will be done within 50 feet of the creek, I don't believe any notice would need to be given to the Army Corp or EPA.

2. The development of Parcel 19 will or does require a road to pass into the creek buffer and bridge crossing over the existing stream, obviously to provide access to the property. Per the applicable terms of the Consent Decree, this activity **does require notice** to be given to the Army Corp and EPA before conducting these activities. It is my understanding that notice has been or will be given and the Army Corp and/or EPA will require mitigation of the area disturbed by the road construction. The proposal by the Amber Grove Group, as I understand it, will provide 24,542 square feet of additional buffer to the creeks. This added buffer is between the two 150 foot buffers between the two creeks passing through Parcel 19. This should provide a larger continuous block of forested high value wildlife habitat area. Again, notice of the proposal will need to be given to the EPA and Army Corp.

Dated this 15<sup>th</sup> day of May, 2023.

DocuSigned by:  
*G. Paul Carpenter*  
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G. Paul Carpenter

GPC:tae