

200104030169



200104030169*
04/03/2001 10:29 AM Snohomish
P.0029 RECORDED County

Return Address
G. Paul Carpenter
ANDERSON HUNTER LAW FIRM
2707 COLBY AVENUE, SUITE 1001
P O BOX 5397
EVERETT, WA 98206-5397

RECORDER'S NOTE:
PORTIONS OF THIS DOCUMENT
ARE POOR QUALITY FOR SCANNING.

Document Title(s) (or transactions contained therein) CONSENT DECREE
Grantor(s) (Last name first, then first name and initials) ARLINGTON VALLEY LAND COMPANY, INC , MICKIE JARVILL, RONALD NOBACH, ROBERT HILD, NOBACH-PACIFIC, and NOBACH-HILD <input type="checkbox"/> Additional names on page _____ of document.
Grantee(s) (Last name first, then first name and initials) UNITED STATES OF AMERICA <input type="checkbox"/> Additional names on page _____ of document
Legal description (abbreviated i.e. lot, block, plat or section, township, range, county) Portion of the S 3/4 of Sec 14, Township 31 N, Range 5 East, W M <input type="checkbox"/> Additional legal is on page _____ of document
Reference Number(s) of Documents assigned or released: N/A <input type="checkbox"/> Additional numbers on page _____ of document
Assessor's Property Tax Parcel/Account Number 310514-001-008-00 <input type="checkbox"/> Property Tax Parcel ID is not yet assigned <input type="checkbox"/> Additional parcel numbers on page _____ of document
The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

ATTEST: BRUCE RIFKIN
Clerk, U.S. District Court
Western District of Washington
By: *[Signature]*
Deputy Clerk

[Signature] FILED
LODGED
2/7 ENTERED
RECEIVED

FEB 03 2000

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

OCT 27 1999 MR

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

BY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

No C99-1711C

Plaintiff,

v

ARLINGTON VALLEY LAND COMPANY,
INC (administered by Susan Stanley in her official
capacity as bankruptcy trustee), MICKIE
JARVILL, an individual, RONALD NOBACH, an
individual, ROBERT HILD, an individual,
NOBACH-PACIFIC, a general partnership,
and NOBACH-HILD, a general partnership,

Defendants

CONSENT DECREE

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed the Complaint herein against Defendants Arlington Valley Land Company, Inc ("AVLC"), Mickie Jarvill, an individual, Ronald Nobach, an individual, Robert Hild, an individual, Nobach-Pacific, a general partnership, and Nobach-Hild, a general partnership (collectively, "Defendants"), alleging that Defendants violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a),

200 1040 30 169

U.S. DEPARTMENT OF JUSTICE
c/o NOAA/Damage Assessment
7600 Sand Point Way, NE
Seattle, WA 98115-0070
(206) 526-6607

Consent Decree

C to C, Inc, Ignor BK

14

1 WHEREAS, the Complaint alleges that Defendants violated CWA Section 301(a) by
2 discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill
3 material into waters of the United States at a site located in Snohomish County near Arlington,
4 Washington (the "Site") and more fully described in the Complaint, without authorization by the
5 United States Department of the Army ("the Corps"),

6 WHEREAS, the Complaint seeks (1) to enjoin the discharge of pollutants into waters of the
7 United States in violation of CWA Section 301(a), 33 U S C § 1311(a), (2) to require Defendants,
8 at their own expense and at the direction of EPA, to restore and/or mitigate the damages caused by
9 their unlawful activities, and (3) to require Defendants to pay civil penalties as provided in 33 U S C
10 § 1319(d),

11 WHEREAS, AVLC filed a petition under Chapter 11 of the United States Bankruptcy Code
12 on August 6, 1993,

13 WHEREAS, the Chapter 11 proceeding was converted on March 22, 1995 to a proceeding
14 under Chapter 7 of the Bankruptcy Code, and as a result, Ms Susan Stanley, Esq , was thereafter
15 appointed as the Trustee pursuant to the applicable provisions of the United States Bankruptcy Code,

16 WHEREAS, Settling Defendants deny that they have engaged in any activities that violated
17 CWA Section 301(a),

18 WHEREAS, this Consent Decree is intended to constitute a complete and final settlement
19 of the United States' claims under the CWA set forth in the Complaint regarding the Site against
20 Nobach-Hild, Ronald Nobach, Robert Hild, and Nobach-Pacific (partnerships and/or individuals
21 including Nobach or Hild are collectively referred to herein as "Nobach Hild,") and Arlington Valley
22 Land Company, Inc ("AVLC"),

23 WHEREAS, AVLC and Nobach Hild are collectively referred to herein as "Settling
24 Defendants,

25
26
27
28
200104030169

Consent Decree

U.S. DEPARTMENT OF JUSTICE
c/o NOAA/Damage Assessment
7600 Sand Point Way, NE
Seattle, WA 98115-0070
(206) 526-6607

1 WHEREAS, the United States and Settling Defendants agree that settlement of this case is
2 in the public interest and that entry of this Consent Decree is the most appropriate means of resolving
3 the United States' claims under the CWA against Settling Defendants in this case, and

4 WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of
5 the United States' claims against Settling Defendants in this case, and that this Consent Decree
6 adequately protects the public interest in accordance with the CWA and all other applicable federal
7 law,

8 THEREFORE, before the taking of any testimony upon the pleadings, without further
9 adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized
10 representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows

11 I. JURISDICTION AND VENUE

12 1 This Court has jurisdiction over the subject matter of these actions and over the
13 parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C.
14 § 1319(b)

15 2 Venue is proper in the Western District of Washington pursuant to CWA Section
16 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the Defendants conduct
17 business in this District, the subject property is located in this District, and the causes of action
18 alleged herein arose in this District

19 3 The United States asserts that the Complaint states claims upon which relief can be
20 granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344

21 II APPLICABILITY

22 4 The obligations of this Consent Decree shall apply to and be binding upon Settling
23 Defendants, their officers, directors, agents, employees and servants, and their successors and
24 assigns, any subsequent purchaser of any of the parcels of real property identified in Appendix B,
25 and any person, firm, association or corporation who is, or will be, acting in concert or participation
26 with any of the Settling Defendants whether or not such person has notice of this Consent Decree

27
28 **200104030169**

Consent Decree

U.S. DEPARTMENT OF JUSTICE
c/o NOAA Damage Assessment
7600 Sand Point Way, NE
Seattle, WA 98115-0070
(206) 526-6607

1 All persons and entities referred to in the preceding sentence shall be known as "Persons Bound" by
2 this Consent Decree. As set forth in Paragraph 18, this Consent Decree shall be recorded, and the
3 obligations in this Consent Decree pertaining to each individual parcel of real property identified in
4 Appendix B remain in force after ownership of these parcels is transferred by AVLC. These
5 obligations are binding upon any person who acquires any parcel of real property identified in
6 Appendix B. However, a purchaser who acquires one or more of the parcels of real property
7 identified in Appendix B assumes only those obligations that pertain to the particular parcel(s) that
8 the purchaser acquires. In any action to enforce this Consent Decree, Persons Bound shall not raise
9 as a defense the failure of any of its officers, directors, agents, employees, successors or assigns or
10 any person, firm or corporation acting in concert or participation with Persons Bound to take any
11 actions necessary to comply with the provisions of this Consent Decree.

12 5 The transfer of ownership or other interest in the lands described in Appendix B shall
13 not alter or relieve Settling Defendants of their obligation to comply with all of the terms of this
14 Consent Decree. At least fifteen (15) days prior to the transfer of ownership or other interest in the
15 lands described in Appendix B, the party making such transfer shall provide written notice and a true
16 copy of this Consent Decree to its successors in interest in such lands and shall simultaneously notify
17 EPA and the United States Department of Justice at the addresses specified in Section IX below that
18 such notice has been given. As a condition to any such transfer, the Settling Defendant making the
19 transfer shall reserve all rights necessary to comply with the terms of this Consent Decree.

20 III SCOPE OF CONSENT DECREE

21 6 This Consent Decree shall constitute a complete and final settlement of all civil
22 claims for injunctive relief and civil penalties alleged in the Complaint against the Settling
23 Defendants concerning the Site.

24 7 Except as in accordance with this Consent Decree, Persons Bound are enjoined from
25 discharging any pollutant into waters of the United States, unless such discharge complies with the
26 provisions of the CWA and its implementing regulations.

27
28 **200104030169**

Consent Decree

U. S. DEPARTMENT OF JUSTICE
c/o NOAA/Damage Assessment
7600 Sand Point Way, NE
Seattle, WA 98115-0070
(206) 526-6607

1 8 Except as discussed in Paragraph 25, below, this Consent Decree is not and shall not
2 be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402
3 or 404 of the CWA, 33 U S C §§ 1342 or 1344, or any other law Except as otherwise provided in
4 this Consent Decree, nothing shall limit the ability of the Corps to issue, modify, suspend, revoke
5 or deny any individual permit or any nationwide or regional general permit, nor shall this Consent
6 Decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33
7 U S C § 1344(c).

8 9 Except as expressly provided herein, this Consent Decree in no way affects or relieves
9 Settling Defendants of their responsibility to comply with any applicable federal, state, or local law,
10 regulation or permit

11 10 This Consent Decree in no way affects the rights of the United States as against any
12 person not a party to this Consent Decree.

13 11 Except as expressly provided herein, the United States reserves any and all legal and
14 equitable remedies available to enforce the provisions of this Consent Decree and applicable law

15 12 Nothing in this Consent Decree shall constitute an admission of fact or law by any
16 party

17 13 The parties anticipate that the bankruptcy estate of AVLC will be closed when there
18 is no further property to administer Closing of the bankruptcy estate will result in a discharge of
19 the Trustee of her duties under this Consent Decree, and any duty or performance required of the
20 Trustee under this Consent Decree will end At such time, all such duties of the Trustee shall by then
21 have been assumed by other persons as set forth in Paragraphs 4 and 18 of this Consent Decree

22 IV SPECIFIC PROVISIONS

23 RESTORATION AND MITIGATION

24 14 Settling Defendants Nobach Hild shall perform restoration and mitigation projects
25 under the terms and conditions stated in the Work Plan in Appendix A attached to this Consent
26 Decree ("Work Plan") All work called for in the Work Plan shall be completed by Settling
27

28 **200104030169**

1 Defendants Nobach Hild no later than twelve (12) months after entry of this Consent Decree All
2 material removed from the Site pursuant to the restoration and mitigation projects described in the
3 Work Plan shall be the property of Nobach-Hild Upon completion of the work called for in the
4 Work Plan, Settling Defendants Nobach Hild shall notify EPA and the Corps in writing of such
5 completion EPA and the Corps shall then inspect the work, and if they concur that the work is
6 complete, they shall confirm in writing to Nobach Hild that the work is complete

7 15 By entering into this Decree, AVLC agrees to permit Nobach-Hild access to its
8 property that is the subject of this Decree to conduct all work described in the Work Plan AVLC
9 further agrees to hold Nobach-Hild harmless for any damage resulting from any activity Nobach-Hild
10 undertakes to comply with the Work Plan

11 16 The parties estimate that the work required by the Work Plan can be completed in two
12 days In addition to the onsite Construction Inspector discussed in the Work Plan in Appendix A,
13 a representative of the United States Army Corps of Engineers ("Corps Representative") will also
14 be continuously present at the Site while construction activities pursuant to the Work Plan are
15 ongoing to monitor those construction activities The Corps Representative will be authorized to
16 approve all activities undertaken pursuant to the Work Plan Approval of activities by the Corps
17 Representative will be a binding determination by the United States that the approved activities are
18 consistent with the Work Plan and fulfill Nobach-Hild's obligations under this Decree If the work
19 required in the Work Plan takes more than two days' work to complete, then the Corps
20 Representative has no obligation to be present at the Site after the second day, but may be present
21 at his or her discretion

22 17 After entry of this Consent Decree, except in compliance with the Work Plan, Settling
23 Defendants shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain, develop,
24 re-contour, use heavy equipment upon, or build structures of any size upon Lots 8, 9, 10, or 11
25 identified in Appendix B or the "Creek Preservation" portion of Lot 12 identified in Appendix B,
26 provided, however, that if some portion of the part of Lot 8 described in Paragraph 22 is determined

27
28 **200104030169**

1 not to be a wetland pursuant to Paragraph 22, then this paragraph will no longer apply to that portion
2 of Lot 8 and to the easement on Lots 9 and 10 that allows access to that portion of Lot 8. The actual
3 boundaries of the Creek Preservation portion of Lot 12 shall be marked on the ground with iron
4 stakes. These boundaries shall correspond as closely as possible to the Creek Preservation
5 boundaries indicated on the map in Appendix B

6 PRESERVATION

7 18. To ensure that all parcels of land identified as Lots 8, 9, 10, and 11 in Appendix
8 B, and the "Creek Preservation" portion of Lot 12 identified in Appendix B, remain undisturbed
9 after entry of this Consent Decree and completion of the Work Plan, Settling Defendants shall,
10 within thirty (30) days of entry of this Consent Decree, record a certified copy of this Consent
11 Decree with the Recorder of Deeds Office, in Snohomish County, Washington. Proof of
12 recording shall be sent to EPA, the Corps, and the United States Department of Justice at the
13 addresses specified in Paragraph 43. Thereafter, each deed, title, or other instrument conveying
14 an interest in any property identified in Appendix B shall contain a notice stating that (1) the
15 property is subject to this Consent Decree and references the recorded location of the Consent
16 Decree and (2) the property is or may be subject to other restrictions under this Consent Decree,
17 including, but not limited to, the conservation easements and restrictive covenants referenced in
18 Paragraph 20. Notice of all such conveyances shall be sent to EPA, the Corps, and the United
19 States Department of Justice at the addresses specified in Paragraph 43.

20 19. Following completion of work called for in the Work Plan, AVLC shall transfer
21 ownership of the following parcels of land identified in the map in Appendix B: Lots 9, 10, and
22 11 in their entirety, and the portion of Lot 8 east of the line indicated on the map in Appendix B
23 that divides Lot 8 roughly in half, together with a 100 foot buffer to the west of that line. The
24 new boundary line between the portion of Lot 8 that is transferred into preservation status and the
25 portion of Lot 8 retained by AVLC shall be located 100 feet west of the line indicated on the map
26 in Appendix B. Fee title to these parcels shall be transferred to a conservation group, subject to

27 **200104030169**

28 Consent Decree

U S DEPARTMENT OF JUSTICE
c/o NOAA Damage Assessment
7600 Sand Point Way, NE
Seattle, WA 98115-0070
(206) 526-6607

1 easement may be used to provide access across Lots 9, 10, and the 100-foot buffer of Lot 8, to
2 the remaining portion of Lot 8. In the event that the remaining portion of Lot 8 is determined to
3 be a wetland pursuant to Paragraph 22, then the 20-foot easement shall be removed from Lots 9,
4 10, and the 100-foot buffer of Lot 8, and any easements, restrictions, and limitations referenced
5 in Paragraph 20 shall be applied to the portions of Lots 9, 10, and the 100-foot buffer of Lot 8
6 formerly subject to the 20-foot easement.

7 22 Five (5) years after entry of this Consent Decree, AVLC and the United States will
8 review whether any part of the portion of Lot 8 not transferred pursuant to Paragraphs 19 and 20
9 is a wetland. If any portion of Lot 8 not transferred pursuant to Paragraphs 19 and 20 is a
10 wetland as defined by the Corps' 1987 Wetlands Delineation Manual, then that portion of Lot 8,
11 or, at AVLC's discretion, all of the remaining portion of Lot 8, will be transferred to the same
12 party under the same conditions set forth in Paragraphs 19 and 20. If the United States and
13 AVLC disagree about the referenced wetland determination, then any dispute will be resolved
14 pursuant to the Dispute Resolution procedures in Section VI.

15 23 Upon the bankruptcy estate of AVLC ceasing as an active case, or upon other
16 termination of the official duties of Susan Stanley as Trustee of AVLC, Ms. Susan Stanley shall
17 have no duties whatsoever under this Consent Decree.

18 NOTICE AND PERMITS FOR ACTIVITIES IN THE NORTHERN LOTS OF AVLC'S
19 PROPERTY

20 24 AVLC and the Corps have also identified the wetlands in Lots 13, 16, 17, 18, 19,
21 and 20, shown on the map in Appendix B. AVLC hereby covenants to give notice to the Corps
22 and EPA before conducting any activities (including but not limited to mowing, cutting, clearing,
23 cultivating, dredging, excavating, farming, filling, dewatering, or draining) in the identified
24 wetlands as well as lands within fifty (50) feet of the creek in Lots 13, 16, 17, 18, 19, and 20, as
25 shown on the map in Appendix B. No notice to the Corps or EPA, and no permit from the Corps
26 under Clean Water Act section 404, shall be required for activities in Lots 13, 16, 17, 18, 19, and

27 **200104030169**

28 Consent Decree

U.S. DEPARTMENT OF JUSTICE
c/o NOAA/Damage Assessment
7600 Sand Point Way, NE
Seattle, WA 98115-0070
(206) 526-6607

1 20, shown on the map in Appendix B, that are outside of the wetland boundaries shown for those
2 Lots and not within 50 feet of the creek on those lots

3 25 The parties acknowledge that Nationwide Permit 32, 61 Fed Reg 65,913 (Dec
4 13, 1996), authorizes any dredged or fill material that was placed on or before the Effective Date
5 of this Consent Decree on Lot 12 to remain in place, subject to the conditions provided in
6 Nationwide Permit 32 and this Consent Decree. The parties further agree that Nationwide Permit
7 32 authorizes the discharge of dredged or fill material insofar as such discharge is necessary to
8 complete the work required to be performed pursuant to this Consent Decree. Any such
9 discharge of dredged or fill material necessary for work required by this Consent Decree shall be
10 subject to the conditions of Nationwide Permit 32 and this Consent Decree.

11 ACCESS

12 26 Settling Defendants shall allow EPA and the Corps, upon prior notification, and at
13 reasonable times with proper identification, to enter onto any property owned by Settling
14 Defendants covered by this Consent Decree for purposes of monitoring and determining
15 compliance with the terms and conditions of this Consent Decree.

16 V NOTICES

17 27 Within 15 days after the deadline for completing any requirement of Paragraphs
18 14, 18, 19, or 20 of this Consent Decree, Settling Defendants shall provide the United States with
19 written notice, at the addresses specified in Section IX of this Consent Decree, of whether or not
20 that task has been completed.

21 28 If the required task has been completed, the notice shall specify the date when it
22 was completed, and explain the reasons for any delay in completion beyond the scheduled time
23 for such completion required by the Consent Decree.

24 VI DISPUTE RESOLUTION

25 29 Any dispute that arises with respect to the meaning or requirements of this
26 Consent Decree shall be, in the first instance, the subject of negotiations among the parties to this

27
28 **200104030169**

1 Consent Decree affected by the dispute to attempt to resolve such dispute. The period for
2 negotiations shall not extend beyond thirty (30) days beginning with written notice by one party
3 to the other affected party or parties that a dispute exists, unless agreed to in writing by those
4 parties. Following the 30-day negotiation period, if the affected parties are unable to agree upon
5 the meaning or the requirements of this Consent Decree, any affected party may petition the
6 Court for resolution of the dispute. The petition shall set forth the nature of the dispute and a
7 proposal for its resolution. Any other affected party shall have thirty (30) days to respond to the
8 petition and propose an alternate resolution. In resolving any such dispute, the controlling
9 standard shall be which of the parties' proposals most appropriately fulfills the terms, conditions,
10 requirements, and objectives of this Consent Decree and the CWA.

11 30 The filing of a petition asking the Court to resolve a dispute shall not extend or
12 postpone any obligation of Settling Defendants under this Consent Decree, except as provided in
13 Paragraph 39 below regarding payment of stipulated penalties.

14 VII FORCE MAJEURE

15 31 Settling Defendants shall perform the actions required under this Decree within
16 the time limits set forth or approved herein, unless the performance is prevented or delayed solely
17 by events which constitute a Force Majeure event. A Force Majeure event is defined as any
18 event arising from causes beyond the control of Settling Defendants, including their employees,
19 agents, consultants and contractors, which could not be overcome by due diligence and which
20 delays or prevents the performance of an action required by this Consent Decree within the
21 specified time period. A Force Majeure event does not include, inter alia, increased costs of
22 performance, changed economic circumstances, changed labor relations, normal precipitation or
23 normal climate events, changed circumstances arising out of the sale, lease or other transfer or
24 conveyance of title or ownership or possession of a site. A failure to obtain federal, state or local
25 permits does not constitute a Force Majeure event unless Settling Defendants have diligently
26 taken all necessary steps to obtain such permits in a timely manner.

27 **200104030169**

28 Consent Decree

U.S. DEPARTMENT OF JUSTICE
c/o NOAA/Damage Assessment
7600 Sand Point Way, NE
Seattle, WA 98115-0070
(206) 526-6607

1 prevented such noncompliance, and (3) the number of days of noncompliance that were caused
2 by such circumstances

3 36 If Settling Defendants Nobach Hild are unable to obtain federal, state or local
4 permits required to perform their obligations under this Consent Decree, and if the inability to
5 obtain such permits constitutes a Force Majeure event, then the United States shall have the
6 following rights. If the needed permits have not been obtained within six (6) months of receipt of
7 the notice required in Paragraph 32, then the United States may, in its discretion, assert against
8 Settling Defendants Nobach Hild, in this action or in a new action, the claims that are set forth in
9 the Complaint filed with this Consent Decree. In such event, any and all covenants and releases
10 of liability made in this Consent Decree by the United States to Settling Defendants Nobach Hild
11 shall be null and void. Furthermore, in such event, Settling Defendants Nobach Hild shall not
12 assert any defense based on statute of limitations, laches, or any other defense asserting that the
13 United States' claims are untimely. In the event that the United States exercises its rights under
14 this paragraph to assert claims against Settling Defendants Nobach Hild, any and all covenants
15 and releases of liability made in this Consent Decree by Settling Defendants Nobach Hild to the
16 United States shall be null and void.

17 VIII STIPULATED PENALTIES

18 37 After the entry of this Consent Decree, if any Settling Defendant(s) responsible for
19 fulfilling any requirement of this Consent Decree (including Appendices A and B) fails to timely
20 do so, then the responsible Settling Defendant(s) shall pay a stipulated penalty to the United
21 States. Unless reduced by the United States at its discretion, or reduced by the Court upon
22 motion as discussed below, the amount of such penalty shall be as follows:

- | | | | |
|----|---|------------------------------------------------------------|------------------|
| 23 | A | For Day 1 up to and including
Day 30 of non-compliance | \$200.00 per day |
| 24 | B | For Day 31 up to and including
Day 60 of non-compliance | \$400.00 per day |
| 25 | C | For Day 61 and beyond
of non-compliance | \$600.00 per day |

26
27
28 **200104030169**

1 Such payments shall be made without demand by the United States on or before the last day of
2 the month following the month in which the stipulated penalty accrued. Any stipulated penalties
3 that are required to be paid pursuant to this paragraph shall be payable only by the Settling
4 Defendant that fails to timely perform the obligation(s) that give(s) rise to the stipulated
5 penalties. No Settling Defendant shall be liable for payment of stipulated penalties incurred by
6 another Settling Defendant.

7 38 Any disputes concerning the amount of stipulated penalties, or the underlying
8 violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant
9 to the Dispute Resolution provisions in Section VI and/or the Force Majeure provisions in
10 Section VII shall be resolved upon petition to this Court as provided in Paragraph 29.

11 39 The filing of a petition requesting that the Court resolve a dispute shall stay
12 Settling Defendants' obligation to pay any stipulated penalties with respect to the disputed matter
13 pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall
14 continue to accrue from the first day of any failure or refusal to comply with any term or
15 condition of this Consent Decree. In the event that Settling Defendants do not prevail on the
16 disputed issue, stipulated penalties shall be paid by Settling Defendants as provided in this
17 Section.

18 40 To the extent that Settling Defendants demonstrate to the Court that a delay or
19 other non-compliance was due to a Force Majeure event (as defined in Paragraph 31 above) or
20 otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that
21 delay or non-compliance.

22 41 In the event that a stipulated penalty payment is applicable and not made on time,
23 interest will be charged in accordance with the statutory judgment interest rate provided for in 28
24 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the
25 date the payment is made. The interest shall also be compounded annually.

26
27
28

200104030169

Consent Decree

U.S. DEPARTMENT OF JUSTICE
c/o NOAA/Damage Assessment
7600 Sand Point Way, NE
Seattle, WA 98115-0070
(206) 526-6607

1 42 Settling Defendants shall make any payment of a stipulated penalty by FedWire
2 Electronic Funds Transfer ("EFT" or wire transfer) to the U S Department of Justice account in
3 accordance with current electronic funds transfer procedures, referencing U S A O file number
4 1996-V02454, EPA Region X and the DOJ case number 90-5-1-4-402 Payment shall be made
5 in accordance with instructions provided to the Settling Defendants by the Financial Litigation
6 Unit of the United States Attorney's Office for the Western District of Washington Any
7 payments received by the Department of Justice after 4 00 P M (Eastern Time) will be credited
8 on the next business day Further, upon payment of any stipulated penalties, Settling Defendants
9 shall provide written notice, at the addresses specified in Section IX of this Decree

10 IX ADDRESSES

11 43 All notices and communications required under this Consent Decree shall be
12 made to the parties through each of the following persons and addresses

13 A TO EPA

14 (1) Deborah Hilsman
15 Assistant Regional Counsel
16 United States Environmental Protection Agency
17 Region 10
18 1200 Sixth Avenue
19 Seattle, WA 98101

18 (2) Lee Danaker
19 Aquatic Resources Unit Manager
20 United States Environmental Protection Agency
21 Region 10
22 1200 Sixth Avenue
23 Seattle, WA 98101

21 B TO THE UNITED STATES DEPARTMENT OF JUSTICE

22 Letitia J Grishaw, Chief
23 Environmental Defense Section
24 U S Department of Justice
25 P O Box 23986
26 Washington, D C 20026-3986

27 **200104030169**

1 C TO THE CORPS

2 Chris McAuliffe
3 Wetlands Biologist
4 United States Army
5 Corps of Engineers, Seattle District
6 4735 East Marginal Way South
7 Seattle, WA 98124

6 D TO SETTling DEFENDANTS

7 Nobach & Hild
8 P. O. Box 58518
9 Renton, WA 98058

10 Samuel W. Plauche, Esquire
11 BUCK & GORDON
12 902 Waterfront Place
13 1011 Western Avenue
14 Seattle, WA 98104-1097

15 Susan Stanley
16 U.S. Bankruptcy Trustee
17 P. O. Box 562
18 Mercer Island, WA 98040

19 Bruce Thurston, Esquire
20 18835 S E 42nd Street, Space 9
21 Issaquah, WA 98027

22 E TO THE SECURED CREDITORS IN THE AVLC BANKRUPTCY MATTER

23 Paul Carpenter, Esquire
24 ANDERSON HUNTER LAW FIRM, P S
25 2707 Colby Avenue, Suite 1001
26 P O Box 5397
27 Everett, WA 98206

28 X COSTS OF SUIT

44 Each party to this Consent Decree shall bear its own costs and attorney's fees in this action. Should Settling Defendants subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, Settling Defendants shall be liable for any costs or attorney's fees incurred by the United States in any action against Settling Defendants for noncompliance with or enforcement of this Consent Decree.

200 1040 30 169

XI PUBLIC COMMENT

45 The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C F R § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. The Settling Defendants agree to entry of this Consent Decree without further consent.

XII CONTINUING JURISDICTION OF THE COURT

46 This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree, and to resolve the United States' claims against Defendant Mickie Jarvill. During the pendency of the Consent Decree, any party to the Consent Decree may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XIII MODIFICATION

47 Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment as to the United States and Settling Defendants. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and the Settling Defendants and approved by the Court.

IT IS SO ORDERED

Dated and entered this 1st day of Feb, 2006, 1999

[Handwritten Signature]
United States District Judge

200104030169

U.S. DEPARTMENT OF JUSTICE
c/o NOAA Damage Assessment
7600 Sand Point Way, NE
Seattle, WA 98115-0070
(206) 526-6607

1 ON BEHALF OF THE UNITED STATES

2 LOIS J SCHIFFER
3 Assistant Attorney General
4 Environment and Natural Resources Division

5 Michael J. Zevenberg
6 Michael J. Zevenberg, Attorney
7 Environmental Defense Section
8 U.S. Department of Justice
9 c/o NOAA/Damage Assessment
10 7600 Sand Point Way, NE
11 Seattle, 98115

Dated Sept. 30, 1999

12 FOR THE UNITED STATES ENVIRONMENTAL
13 PROTECTION AGENCY

14 Steven A. Herman
15 Steven A. Herman
16 Assistant Administrator for
17 Enforcement and Compliance Assurance
18 U.S. Environmental Protection Agency
19 401 M Street, S.W.
20 Washington D.C. 20460

Dated 10/4/99

21 FOR THE UNITED STATES ARMY
22 CORPS OF ENGINEERS

23 James M. Rigsby
24 James M. Rigsby
25 Colonel, United States Army
26 Corps of Engineers
27 District Engineer, Seattle District
28 4735 East Marginal Way South
Seattle, WA 98124

Dated 16 Oct 99

FOR SETTLING DEFENDANT DEFENDANT Nobach & Hild

29 Samuel W. Plauche
30 Samuel W. Plauche, Esquire
31 BUCK & GORDON
32 902 Waterfront Place
33 1011 Western Avenue
34 Seattle, WA 98104-1097

Dated 9/30/99

200 1040 30 169

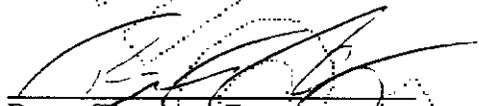
Consent Decree

U.S. DEPARTMENT OF JUSTICE
c/o NOAA/Damage Assessment
7600 Sand Point Way, NE
Seattle, WA 98115-0070
(206) 526-6607

1
2 FOR SETTLING DEFENDANT Arlington Valley Land Corporation
3

4 
5 Susan Stanley
6 United States Bankruptcy Trustee
7 for Arlington Valley Land Corporation
8 P. O. Box 562
9 Mercer Island, WA 98040

Dated 9/30/99

10 
11 Bruce Thurston, Esquire
12 18835 S E 42nd Street, Space 9
13 Issaquah, WA 98027

Dated 9/30/99

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
200 1040 30 169

Consent Decree

U. S. DEPARTMENT OF JUSTICE
c/o NOAA/Damage Assessment
7600 Sand Point Way, NE
Seattle, WA 98115-0070
(206) 526-6607

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPENDIX A

200104030169

Consent Decree

U.S. DEPARTMENT OF JUSTICE
c/o NOAA/Damage Assessment
7600 Sand Point Way, NE
Seattle, WA 98115-0070
(206) 526-6607

Unofficial Document

Arlington Valley Land Company Wetland Compensation Plan

Prepared for:

Buck & Gordon
Waterfront Place
1011 Western Avenue, Suite 902
Seattle, Washington 98104

Prepared by:

Shapiro and Associates, Inc.
101 Yesler Way, Suite 400
Seattle, Washington 98104

200104030169

December 1998

PURPOSE

The purpose of this plan is to describe construction methods for the construction of a depressional area of potential wetland habitat as compensation for previous disturbance of onsite wetlands.

LOCATION

The construction site is situated along the north and south sides of 191st Street NE, in the town of Arlington, Snohomish County, Washington (Section 14, T13N, R5E, W M.).

GOALS AND OBJECTIVES

The overall goal of this plan is to construct a depressional open area adjacent to existing wetlands, hydroseed the excavated area and to replace into the excavated area designated native trees salvaged from the excavation area. Salvaged trees shall include red alder (*Alnus rubra*), black cottonwood (*Populus balsamifera* ssp. *trichocarpa*) and willow species (*Salix* spp) that have previously been identified. Following replacement of the salvaged trees the excavation area will be hydroseeded. No additional plantings are to occur within the existing wetland areas.

The mitigation goals will be accomplished by achieving the following objectives

- 1 Excavate the mitigation area to a depth of 1 foot above the subsurface gravel layer while maintaining the recommended slope
- 2 Excavate fill material from existing wetland areas
- 3 Remove designated red alder, black cottonwood and willow from the excavation area and replace after excavation.

GENERAL DESCRIPTION OF CONSTRUCTION ACTIVITY

An onsite Construction Inspector will monitor construction activities. The Construction Inspector will be either a wetland biologist or landscape architect.

The construction activity will consist of removal of all vegetation within the clearing limits, identified as Area A on the attached map, prior to excavation of the depressional area.

The construction zone is to be excavated to a depth of 1 foot above an identified subsurface gravel layer. A backhoe will be used to locate the gravel layer and establish the actual depth of excavation. Once the elevation has been established, the backhoe operator will excavate the material within reach of the backhoe arm while maintaining the desired slope, then repeat the process in a systematic manner until the excavation is complete while maintaining the desired slope.

GRADING AND CONSTRUCTION SEQUENCE

- a Prominently mark the clearing limits between the excavated area and the undisturbed wetland, protection, and buffer areas. Marking of the clearing limits will be performed by the Construction Inspector prior to initiating construction activities.

200104030169

- b. Remove flagged red alder, black cottonwood and willow trees and their soil with a backhoe
- c. Identify an area at least 50 feet away from the existing and created wetland for stockpiling of excavated materials.
- d. Carefully clear the construction area (Area A) of all vegetation.
- e. Excavate the area identified as Area A to a depth of 1 foot above the subsurface gravel layer providing a slope of not greater than 5:1 (5 feet horizontal for every 1 foot vertical).

Excavation will begin along the east edge of Wetland C and east edge of the west berm, then continue north to 191st Street NE while maintaining the desired slope. The 191st Street NE corridor, in the vicinity of the mitigation area, will be removed as part of this mitigation.

Excavation in the area north of 191st Street Northeast will begin along the edge of Wetland B and continue westward to a distance of approximately 60 feet east of the Utility Easement.

- f. Carefully place excavated red alder, black cottonwood, and willows into the construction area.
- g. Remove existing stockpiled fill from Wetland B.

SPECIFICATIONS FOR TREE REPLACEMENT AND SEEDING

A. Tree Replacement

Following excavation activities, salvaged trees previously removed will be replaced in the excavation using a backhoe. Every reasonable effort will be made to ensure soil remains around tree roots to maximize opportunity for survival.

B. Seed Mix

Seed mix for seeding of the construction area will be of the following composition, proportion, and quality:

Kind and Variety of Seed in Mixture	% by Weight	Minimum % Pure Live Seed
<i>Agrostis stolonifera</i> creeping bentgrass	30	80
<i>Alopecurus aequilis</i> short-awn foxtail	30	80
<i>Alopecurus geniculatus</i> water foxtail	30	80
<i>Festuca rubra</i> native red fescue	10	80
TOTAL	100.0%	

200 1040 30 169

If hydroseeding, seed mix as indicated on drawing, wood cellulose fiber from Douglas Fir or Western Hemlock dyed to facilitate placement, and non-toxic, biodegradable tackifier such as J-TAC or approved equal shall be used

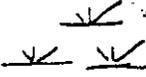
If broadcast seeding, seed mix as indicated shall be used.

For hydroseeding, 3 pounds seed mix and 30 pounds of mulch shall be applied per 1000 square feet. For slopes over 30%, mulch shall be increased to 60 pounds and 1 pound of tackifier shall be used per 1,000 square feet of area. No fertilizer shall be included in the seed mix.

200104030169

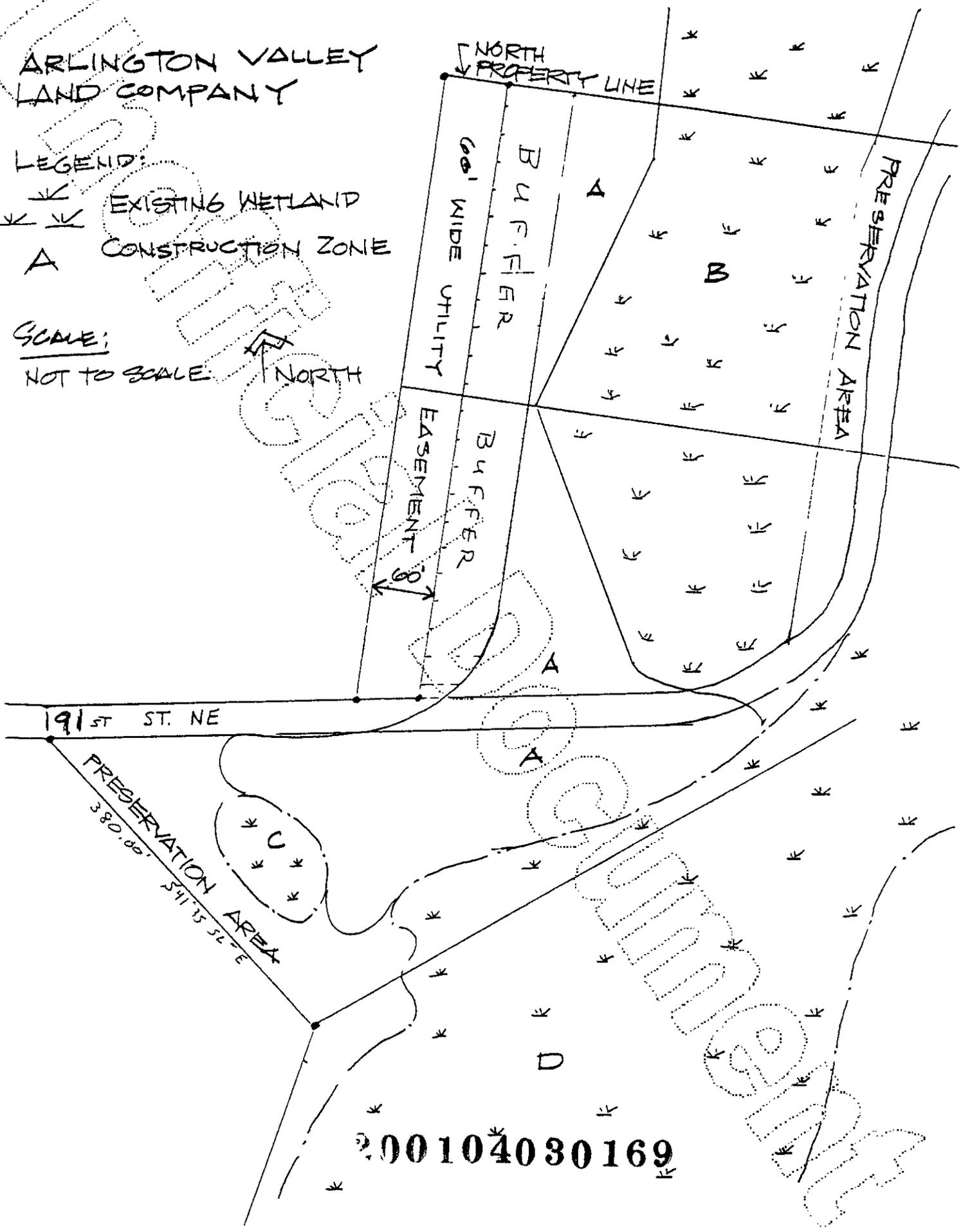
ARLINGTON VALLEY LAND COMPANY

LEGEND:

-  EXISTING WETLAND
-  CONSTRUCTION ZONE

SCALE:

NOT TO SCALE



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPENDIX B

200104030169

Consent Decree

U S DEPARTMENT OF JUSTICE
c/o NOAA/Damage Assessment
7600 Sand Point Way, NE
Seattle, WA 98115-0070
(206) 526-6607

DRAFT

61 E 4104

RE ACCR F&D COPI
MON IN CASE 2-198P

