

CONSENT ORDER

On or about August 1, 2008 the City of West Linn (hereinafter "City") was informed that violations of the Community Development Code chapters 27, 28, and 32 had been committed at 3831 Calaroga Drive, the details of which are as follows:

Construction activities, including clearing, grading, revegetation, and construction of paths and rock walls within a designated water resource area, within the Willamette River Greenway overlay and associated habitat conservation areas, and within the Flood Management Area without necessary authorization or permits

The maximum possible penalty for the total of the violations alleged above is \$ 1,000.00 per violation, per day (\$3,000 total per day due to violations of the three CDC chapters listed above).

Arthur Berg, owner of the real property referred to above, wishes to enter into a Consent Order pursuant to West Linn Community Development Code(CDC) Section 106.045 to remedy and to abate the violations.

NOW, THEREFORE, IT IS HEREBY AGREED by the City of West Linn and Arthur Berg (hereinafter "Owner") that he will comply with this Consent Order, including the following conditions:

1. Within 60 days of the date of this Order, the Owner shall submit to City for approval a plan and implementation schedule that meets or exceeds all of the requirements under chapters 27, 28, and 32 of the CDC and includes, at a minimum, the following:
 - a. Erosion control measures to the satisfaction of the City Erosion Control Engineer to avoid, or when that is not possible, minimize any further erosion at this location.
 - b. Removal of any paved path within 15 feet of the stream and restoration of the disturbed area with native vegetation. Paths may be realigned at least 15 feet from the stream. Any (paved or unpaved) paths constructed in the transition area must be offset by mitigation, preferably on site, under the provisions of CDC Section 32.070.
 - c. Rock walls must be removed and restored to native vegetation unless the Owner provides a geotechnical engineer's stamped report proving that the walls are the minimum needed to stabilize an otherwise unstable slope. The report shall demonstrate that slope/site stabilization measures shall not cause subsequent erosion or deposits on upstream or downstream properties, and shall demonstrate that steps have been taken to minimize potential impact on the riparian environment. If it is concluded that the walls need to remain, an area equal in size to the lateral square footage of

the walls outside the drainageway transition area on site shall be restored to native vegetation

d. All areas disturbed by either the illegal activities or the activities required to fulfill this consent order must be revegetated with native vegetation per CDC Section 32.080, except for any trails and walls allowed to remain per paragraphs b and c above.

Any area within the Willamette River Greenway overlay zone and/or within the areas designated as low, moderate, or high habitat conservation areas by Metro outside the stream transition area on site that has been permanently disturbed by the violations or work approved under this consent order shall be offset by mitigation, preferably on site, under the provisions of Section 32.070, and any area within the habitat conservation areas or Willamette River Greenway overlay that has been temporarily disturbed by the construction activity shall be revegetated per Section 32.080.

2. Within 90 days of the date of this Order, the Owner shall provide a signed and sealed hydrologic and hydraulic analysis from a certified engineer licensed to practice in the state of Oregon or hydrologist demonstrating that all of the activities previously completed on site in violation of the CDC, and all activities proposed under this Order, will result in no increase in flood levels during the occurrence of the base flood discharge, no increase in flood impacts for surrounding properties nor cause negative downstream effects, and that cut and fill have been balanced within the Flood Management Area overlay.
3. Within 90 days of the date of this Order, the Owner shall demonstrate compliance with all requirements from the Department of State Lands (“DSL”). The Owner shall either obtain a permit from DSL for the proposed activities or provide documentation from DSL that no permit is required.
4. Upon completion of all activities described herein, and within 240 days of date of this Order (unless extended by the City to accommodate a “work window” established by DSL), the Owner shall request a final inspection and receive a written approval from the Planning Director, or designee, verifying that all requirements of this Consent Order have been satisfied. Prior to receiving final approval from the Planning Director, the Owner(s) shall recompense the City for enforcement, inspection, oversight and processing and notification fees as well as administrative costs, which may include attorney’s fees incurred by City to enforce the Code.
5. No other development activities shall be permitted within the riparian corridor, water resource area, Willamette River Greenway, Metro Habitat Conservation Area, or Flood Management Area without prior authorization from the City of West Linn.

6. Within 180 days of the date of this Order, the Owner shall pay to the City the amount of \$4,600.00, the approximate cost to process the applications otherwise required for the subject activities, which sum is in addition to any amounts required to be paid to City pursuant to paragraph 4, above.

7. All conditions and required payments as specified herein shall be completed no later than 190 days after the date of signing of this Consent Order, unless extended per section 4 above.

It is understood by the parties hereto that no City permits or approvals will be required to complete the conditions referred to above; however, permits may be required from other agencies which City has no authority to waive (for instance, permits from DSL or from the Corps of Engineers). If permits are required from other agencies, it will be the responsibility of the Owner to apply for and receive those permits prior to commencing work.

The City and Owner agree that if the above-enumerated conditions are fully complied with, the violation(s) will be completely abated and the real property shall be in full compliance with the West Linn Municipal Code and the Community Development Code, as they are constituted on the date of completion of the conditions.

City acknowledges that the signing of this Consent Order operates to suspend enforcement action for violations enumerated in this Consent Order and agrees to take no further enforcement or abatement action during the pendency of the Consent Order.

The Owner understands that notice of the Consent Order shall be provided to all owners of property within 500 feet of the location of any remedial work required pursuant to the conditions herein, posted on the subject site, and also published in the local newspaper. The Owner is aware that an appeal may be filed challenging the Consent Order and/or the conditions required by the Consent Order to abate the violations. If this Consent Order is appealed, the deadlines outlined in the Consent Order and the term of the Consent Order will be extended by the same number of days that elapse from the date upon which the Owner signs this Consent Order to the final resolution of the appeal.


The Owner understands and agrees that, if for whatever reason, the conditions contained within this Consent Order are not fully complied with by the deadlines set forth herein, the Consent Order shall terminate and the City may re-commence enforcement and/or abatement actions against Owner and the real property as if the Consent Order never existed.

IN WITNESS WHEREOF, City has caused this Consent Order to be executed by its duly authorized Planning Director and Owner has executed this Consent Order on the date written opposite their names.

CITY OF WEST LINN


By: John Sonnen, West Linn Planning Director

1/3/2011
Date

OWNER

By:

12/21/10
Date