COMMONWEALTH *of* VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

ACRES DEVELOPMENT, LLC

VWP General Permit WP4-03-2069

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d) between the State Water Control Board and Acres Development, LLC to resolve certain alleged violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.

2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.

3. "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the DEQ.

5. "DEQ-VRO" means the Valley Regional Office of the DEQ.

6. "Acres Development" or "the Company" means Acres Development, LLC.

7. "The Project" means the Taylor Ridge Subdivision owned by Acres Development.

8. "VWP Regulation" means the Virginia Water Protection Regulation, 9 VAC 25-210-10 *et seq.*

9. "VPDES Regulation" means the Virginia Pollutant Discharge Elimination System General Permit Regulation for Discharges of Stormwater from Construction Activities, 9 VAC 25-180-10 *et seq.*

10. "The Permit" means Virginia Water Protection General Permit No. WP4-03-2069, issued to Acres Development.

11. "Order" means this document, also known as a Consent Special Order.

SECTION C: Findings of Fact and Conclusions of Law

1. The Project, a single family home subdivision, is located at Route 53 near S.R. 4645, Fluvanna County, Virginia.

2. On October 29, 2003, DEQ issued coverage to Acres Development under the Permit. The Permit authorizes Acres Development to impact 285 linear feet of perennial stream and 55 feet of intermittent stream through the installation of five stream crossings (Crossings A, B, C, D & E) associated with construction of the Project.

3. On June 25, 2004, DEQ staff performed an inspection of the Project to evaluate compliance with the Permit. As of the date of the inspection, staff observed that no construction activity or impacts had occurred on Crossings B, C or D.

4. Based on staff's observations made during the June 25, 2004 inspection of the Project concerning Crossings A and E, site stormwater management practices and overall site activities, on July 19, 2004 DEQ issued Notice of Violation No. 04-7-VRO-4 to Acres Development citing the following apparent violations of State Water Control Law, the Permit, the VWP Regulation and the VPDES Regulation:

Crossing E

a. Disturbed land and fill not stabilized with proper erosion & sedimentation ("E&S") controls in apparent violation of Parts I.C.5 & I.C.6 of the Permit; and,

b. Impacts outside of the scope of those authorized under the Permit both upstream and downstream of the permitted crossing in apparent violation of Va. Code § 62.1-44.5.A, 9 VAC 25-210-50.A of the VWP Regulation and Parts I.A.2, I.C.2, III.B and III.P of the Permit.

Crossing A

c. Crossing not constructed in accordance with the Permit (failure to countersink culvert) in apparent violation of Parts I.C.2 and I.D.2 of the Permit;

d. Improper installation and maintenance of E&S controls in apparent violation of Parts I.C.5 & I.C.6 of the Permit; and,

e. Impacts outside of the scope of those authorized under the Permit both upstream and downstream of the permitted crossing in apparent violation of Va. Code § 62.1-44.5.A, 9 VAC 25-210-50.A of the VWP Regulation and Parts I.A.2, I.C.2, III.B and III.P of the Permit.

Lot 5

f. Impacts not authorized under the Permit (unauthorized crossing of an intermittent stream channel) in apparent violation of Va. Code § 62.1-44.5.A, 9 VAC 25-210-50.A of the VWP Regulation and Parts I.A.2, I.C.2, III.B and III.P of the Permit; and,

g. Improper installation and maintenance of E&S controls in apparent violation of Parts I.C.5 & I.C.6 of the Permit.

Stormwater Management

h. Failure to submit a Registration Statement prior to the initiation of land disturbing activities in apparent violation of 9 VAC 25-180-60.A of the VPDES Regulation.

5. On August 6, 2004, staff of DEQ met with a representative of Acres Development at the Project site in an informal enforcement conference. During the meeting, staff of DEQ advised the representative of Acres Development of the corrective measures necessary to return the Project to compliance with State Water Control Law.

6. On September 29, 2004, Acres Development submitted a Registration Statement for land disturbing activities. On October 15, 2004, Acres Development received coverage under VPDES General Permit No. VAR104478 for construction activities at the Taylor Ridge Subdivision.

7. During a December 14, 2004 meeting at the Project, DEQ observed that the corrective measures necessary to return the Project to compliance with Water Protection General Permit No. WP4-03-2069 had been implemented.

8. In January 2005, jurisdiction for construction site stormwater management was transferred to the Department of Conservation and Recreation ("DCR"); accordingly, that violation has been referred to DCR and is not further addressed in this Order.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8d), orders Acres Development, and Acres Development voluntarily agrees, to pay a civil charge of **$7,500** within 30 days of the effective date of the Order in settlement of the alleged violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Acres Development shall include its Federal Identification Number with the civil charge payment and shall note on the check that payment is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Acres Development, for good cause shown by Acres Development, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those alleged violations addressed in NOV No. 04-7-VRO-4, including those alleged violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered alleged violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Acres Development admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Acres Development consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Acres Development declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and waives its right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver by Acres Development of the right to any administrative proceeding for, or to judicial review of, any action

taken by the Board to enforce this Order.

6. Failure by Acres Development to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such alleged violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Acres Development shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Acres Development shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Acres Development shall notify the Regional Director of the VRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of any such delay or noncompliance;

   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and,

   d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

   Failure to so notify the Regional Director of the VRO within 24 hours of learning of any condition above, which Acres Development intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Acres Development. Notwithstanding the foregoing, Acres Development agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Acres Development. Termination of

this Order, or any obligation imposed in this Order, shall not operate to relieve Acres Development from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Acres Development voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5th day of July, 2005.

for Robert G. Burnley, Director
Department of Environmental Quality

Acres Development voluntarily agrees to the issuance of this Order.

By: Manager Acre Development

Date: 3-10-05

Commonwealth of Virginia
City/County of Fluvanna

The foregoing document was signed and acknowledged before me this 10th day of March, ~~2005~~ 2005, by Keith B. Smith, who is
(name)
Member/Manager of Acres Development of Acres Development, LLC on behalf of the LLC.
(title)

Notary Public

My commission expires: March 31, 2009.