COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION- SPECIAL ORDER BY CONSENT
ISSUED TO
Centerville II, LLC

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and § 62.1-44.15(8d), between the State Water Control Board and Centerville II, LLC for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

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

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

2. "Centerville II" means Centerville II, LLC, certified to do business in Virginia, and its affiliates, partners, subsidiaries, and parents.

3. "Department" or "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 Department of Environmental Quality.

5. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.

6. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant

or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.

7. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.

8. "Joint Permit Application (JPA)" means an application form that is used to apply for permits from the Norfolk District Army Corps of Engineers, the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and local wetland boards for work in waters of the United States and in surface waters of Virginia.

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

10. "Preservation" means the protection of resources in perpetuity through the implementation of appropriate legal and physical mechanisms.

11. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.

12. "Property" means the approximately 17.4 acre undeveloped parcel owned by Centerville II, located at the terminus of Kinderly Lane adjacent to the Charlestown Shores Subdivision in Chesapeake, Virginia.

13. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

14. "SIA" means Site Improvement Associate, Inc., the contractor hired by Centerville II, LLC to conduct the alleged clearing and grubbing on the parcel.

15. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.

16. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. 9 VAC 25-210-10.

17. "Surface water" means all state waters that are not ground waters as defined in § 62.1-255 of the Code of Virginia.

18. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

19. "USACE" means the U.S. Army Corps of Engineers.

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

21. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

22. "Wetland delineation" means a report that establishes the existence (location) and physical limits (size) of a wetland for the purposes of federal, state, and local regulations.

SECTION C: Findings of Fact and Conclusions of Law

1. Centerville II, a person pursuant to 9 VAC 25-210-10, owns the Property. The Property contains uplands as well as forested nontidal wetlands which are surface waters of the Commonwealth.

2. On May 24, 2007 DEQ received notice from the USACE that approximately 8.3 acres of unauthorized forested wetland land clearing, including excavation, fill, removal of trees, and grubbing of stumps, had occurred on the Property. Reportedly, the clearing, excavating, filling, and grubbing of stumps on the Property began in March 2007 and continued for approximately 30 days until the USACE advised Centerville II that the area likely contained wetlands. The USACE issued a formal "cease and desist" notice on June 4, 2007. According to Centerville II, the parcel was being cleared and grubbed to provide twenty-seven (27) building lots for a residential subdivision. After the cease and desist notice was issued all work on the Property stopped.

3. On June 4, 2007, DEQ staff conducted an inspection of the Property accompanied by USACE and SIA staff. DEQ staff observed that unauthorized excavation and filling activity had occurred, in the area that appeared consistent with the approximately 8.3 acre area depicted on aerial photography and GIS mapping provided by the USACE. The impacted area had contained palustrine, forested, nontidal wetlands based on a 1993 delineation confirmed by the USACE on January 28, 1993 and reconfirmed by the USACE on March 13, 2001. At the time of the June 4, 2007 inspection, palustrine forested nontidal wetlands were not evident. A pile of large woody debris, including stumps, was observed near the center of the Property. A smaller pile of mulch was also observed within the

cleared area on the Property. A partially graveled path extended from the southern terminus of adjacent subdivision street Kinderly Lane through the cleared area to the man-made canal on the south side of the parcel. The large woody debris pile, smaller pile of mulch, and graveled path constitute fill material.

4. A review of DEQ files did not find a Joint Permit Application submitted for the apparent impacts to wetlands on the Property.

5. Va. Code § 62.1-44.15:20 states that except in compliance with VWP permit, it is unlawful to excavate in a wetland, or conduct the following activities in a wetland: (b) filling or dumping...(d) new activities that cause significant alteration or degradation of existing wetland acreage or functions. Similarly, 9 VAC 25-210-50 (A) states that except in compliance with a permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical, or biological properties of surface waters, including wetlands.

6. DEQ issued Notice of Violation No. W2007-06-TRO-101, dated June 27, 2007, to Centerville II, LLC for unpermitted impacts to nontidal wetlands. Centerville II and SIA met with DEQ staff to discuss the observations stated in the Notice of Violation and what actions were needed to ensure compliance with state law and regulations.

7. On July 17, 2008 MAP Environmental Inc., consultants for Centerville II, submitted a wetland delineation for the Property. On August 27, 2008 DEQ and USACE staff, along with representatives from MAP Environmental Inc., visited the Property to review the delineation. However, regarding the 8.3 acres of alleged impacts to wetlands, USACE staff declined to confirm the delineation submitted on July 17, 2008 based on the best available data of the pre-disturbance conditions of the Property including the delineation confirmed on January 28, 1993 and reconfirmed March 13, 2001.

8. Centerville II is in violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 for excavating, filling, and discharging a pollutant into surface waters without a VWP permit, which resulted in the significant alteration and degradation of 8.3 acres of wetlands.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15(8a) and (8d), the Board orders Centerville II, and Centerville II agrees to:

1. Perform the actions described in the Appendix of this Order; and

2. Pay a civil charge of $43,875.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Centerville II shall include its Federal Employer Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

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

2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Centerville II by DEQ on June 27, 2007. 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 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, Centerville II admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Centerville II 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. Centerville II declares they have received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law and they waive the 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 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 Centerville II 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 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. Centerville II 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. Centerville II shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Centerville II shall notify the DEQ Regional Director 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 within 24 hours of learning of any condition above, which the parties intend 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. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

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

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

11. By its signature below, Centerville II voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29th day of October, 2009.

Francis L. Daniel

FRANCIS ~~Frank~~ Daniel, Regional Director
FLD Department of Environmental Quality

Centerville II, LLC voluntarily agrees to the issuance of this Order.

Date: _____ By: _____, _____
(Person) (Title)
Centerville II, LLC

Commonwealth of Virginia
City/County of VIRGINIA BEACH

The foregoing document was signed and acknowledged before me this 12TH day of JUNE, 2009, by JAMES ARNHOLD who is Member MANAGER of Centerville II, LLC on behalf of the company.

Betty L. Jenkins
Notary Public

323757
Registration No.

My commission expires: FEB 28, 2011

Notary seal:

BETTY L. JENKINS
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #323757
My Commission Expires Feb. 28, 2011

APPENDIX

Centerville II shall:

1. Submit a complete and approvable Joint Permit Application for any proposed permanent impacts and/or an approvable wetland preservation and restoration plan and implementation schedule for the impacted wetland area specified in Section C.2 of this Order within 30 days of the effective date of this Order

2. Initiate the final approved preservation and restoration plan and implementation schedule within 30 days of approval by DEQ staff.

3. Comply with any Permit issued for permanent impacts and the wetland preservation and restoration plan and implementation schedule required by this Appendix.

4. Mail all submittals and reports required by this Appendix to:

   Francis L. Daniel, Regional Director
   DEQ, Tidewater Regional Office
   5636 Southern Boulevard
   Virginia Beach, VA 23462