COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - SPECIAL ORDER BY CONSENT
ISSUED TO
J.W. HOLDINGS, INC. AND CRADDOCK OAKS DEVELOPERS, INC.
Unpermitted Activity

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d), between the State Water Control Board and J. W. Holdings, Inc. and Craddock Oaks Developers, Inc., for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

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

1. "Act" means Va. Code § 62.1-44.15:20, Virginia Water Protection Permit.

2. "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.

3. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

4. "CODI" means Craddock Oaks Developers, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. CODI is a "person" within the meaning of Va. Code § 62.1-44.3 and 9 VAC 25-210.10.

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

6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

7. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

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

9. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water from 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.

10. "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.

11. "JWHI" means J. W. Holdings, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. JWHI is a "person" within the meaning of Va. Code § 62.1-44.3 and 9 VAC 25-210-10.

12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

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

14. "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.

15. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the Board, are "pollution" for the terms and purposes of this chapter. 9 VAC 25-210-10.

16. "Property" means the tract of land in Bedford County, Virginia designated in Bedford County land records as Parcel No. 250-A-1 and Parcel No. 250-A-2. The owner of Parcel No. 250-A-1 is J. W. Holdings, Inc. The owner of Parcel No. 250-A-2 is Craddock Oak Developers, Inc.

17. "Regulations" means the Virginia Water Protection Permit Program Regulation, 9 VAC 25-

210-10 *et seq.*

18. "Responsible Parties" means JWHI and CODI, jointly and severally.

19. "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.

20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.14:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.

21. "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.

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

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

24. "VAC" means the Virginia Administrative Code.

25. "Virginia Water Protection permit" or "VWP Permit" means an individual or general permit issued by authority of the Board under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.

26. "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.

SECTION C: Findings of Fact and Conclusions of Law

1. CODI and JWHI are corporations organized to develop land in Bedford County adjacent to Smith Mountain Lake.

2. JWHI submitted Joint Permit Application ("JPA") No. 08-0474 for a VWP Permit to DEQ on March 10, 2008 for stream and wetlands impacts on the Property associated with constructing the Craddock Oaks Subdivision and Golf Course, including a water intake to irrigate the golf course. JWHI withdrew this application on April 25, 2008. JWHI submitted a second VWP Permit application, JPA No. 08-1860, on August 11, 2008.

3. One of the impacts proposed in JPA No. 08-0474 was a crossing to a stream identified in the JPA as Stream 3F. Stream 3F is a surface water. The crossing was proposed to impact 257

linear feet of Stream 3F by routing the stream through a 36-inch reinforced concrete pipe.

4. After being notified by the Developer's engineer, Mr. Orrison, of a possible violation, on August 19, 2008, DEQ staff inspected the Property for conformity with the requirements of the State Water Control Law and the Regulations. DEQ staff observed that the original bed of Stream 3F had been filled and that Stream 3F had been relocated to a ditch adjacent to the fill area. No culvert had been used in this construction.

5. As of the August 19, 2008 inspection, a VWP Permit for impacts to the Property had not been issued.

6. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit both filling of surface waters and new activities that cause significant alteration or degradation of existing wetland acreage or functions without a VWP permit issued by the Director.

7. On August 25, 2008, DEQ issued NOV No. 08-08-WCRO-002 to JWHI for the alleged violation of Code § 62.1-44.15:20 and 9 VAC 25-210-50 observed during the August 19, 2008 inspection.

8. An e-mail dated September 3, 2008 from Perkins & Orisson, Inc., consultants for JWHI, stated that the total impact to Stream 3F was 342 linear feet.

9. DEQ-BRRO staff met with representatives of JWHI and CODI on September 19, 2008 to discuss the NOV issued to JWHI on August 25, 2008.

10. DEQ staff re-inspected the Property for conformity with the requirements of the State Water Control Law and the Regulations on January 22, 2009. DEQ staff observed that: a) Stream 3F had been successfully stabilized, b) a total of 0.14 acres of wetlands (consisting of separate 0.06 and 0.08 acre areas of mixed forest, shrub, and emergent vegetative canopy) had been cleared to the ground surface, but the stumps had not been removed, c) a small quantity of riprap used to construct an outlet weir for a sediment trap had encroached in to a stream bed; d) two temporary stream crossings had accumulated debris, which had led to a minor backup of sediment in to the stream.

11. The clearing of wetlands described in Paragraph 10(b) above was a significant degradation of existing wetland function. The encroachment of riprap described in Paragraph 10(c) above and the sediment backup described in Paragraph 10(d) above caused filling of surface waters.

12. As of the January 22, 2009 inspection, a VWP Permit for impacts to the Property had not been issued.

13. On February 13, 2009, DEQ issued NOV No. 09-02-BRRO-R-001 to JWHI and CODI for the alleged violations of Code § 62.1-44.15:20 and 9 VAC 25-210-50 observed during the January 22, 2009 inspection.

14. The discharge of fill material by JWHI and CODI at the Property as described in Paragraphs C.4 and C.10 above is a violation of Va. Code § 62.1.-44.15:20 and 9 VAC 25-210-50. The

alteration or degradation of existing wetland acreage or functions as described in Paragraph C.10 above is a violation of Va. Code § 62.1.-44.15:20 and 9 VAC 25-210-50.

15. DEQ-BRRO staff met with representatives of JWHI and CODI on February 26, 2009 to discuss the NOV issued to JWHI and CODI on February 13, 2009.

16. Based on the results of the August 19, 2008 and January 22, 2009 inspections, the Board concludes that JWHI has violated Va. Code § 62.1.-44.15:20 and 9 VAC 25-210-50 as noted above.

17. In a letter dated March 6, 2009, CODI formally withdrew JPA No. 08-1860.

18. In a separate letter dated March 6, 2009, Mr. Orrison documented removal of the riprap from the sediment trap outlet, as described above.

19. On March 31, 2009, Mr Orrison and DEQ staff discussed on the phone a tentative schedule for corrective action, including riprap removal and wetland tree planting. On April 8, 2009, Mr. Brown, a maintenance supervisor for CODI, discussed on the phone with DEQ staff proposed wetland tree replanting work, including tree size and density and a schedule for planting. An e-mail from CODI dated April 20, 2009 to DEQ documented completing of the wetland tree planting work in accordance with the approved schedule.

20. In order for CODI and JWHI to complete their return to compliance, DEQ staff and representatives of CODI and JWHI have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code §§ 62.1-44.15(8a) and (8d), the Board orders the Responsible Parties, and the Responsible Parties voluntarily agree, to:

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

2. Pay a civil charge of $15,600.00 in settlement of the violations cited in this Order. The Responsible Parties shall pay $3,900.00 of this civil charge not later than 30 days after the effective date of this Order. Payment of the remaining $11,700 of this civil charge shall be made in three installments of $3,900 each, due on the following schedule:

Installment Number	Amount Due	Due Date
1	$3,900.00	March 15, 2010
2	$3,900.00	May 15, 2010
3	$3,900.00	July 15, 2010

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

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

JWHI and/or CODI, as appropriate, shall include their Federal Identification Number(s) 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 this Order with the consent of the Responsible Parties, for good cause shown by the Responsible Parties, or on its own motion after notice pursuant to the Administrative Process Act ("APA"),Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. 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; or (3) taking subsequent action to enforce this Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, the Responsible Parties admit the jurisdictional allegations, finding of fact, and conclusions of law contained herein.

4. The Responsible Parties consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. The Responsible Parties declare that they have received fair and due process under the APA and State Water Control Law and 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 judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by the Responsible Parties 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. The Responsible Parties 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. The Responsible Parties shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. The Responsible Parties shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this 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 BRRO Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Responsible Parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of 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 the Responsible Parties. Nevertheless, the Responsible Parties agree to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

    a. the Responsible Parties petition the Director his designee to terminate the Order after they have completed all of the requirements of the Order and the Director or his designee approves termination of the Order; or,

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days notice to the Responsible Parties.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Responsible Parties from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the

Responsible Parties and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of the Responsible Parties certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Responsible Parties to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Responsible Parties.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other then those expressed in this Order.

15. By their signatures below, the Responsible Parties voluntarily agree to the issuance of this Order.

And it is so ORDERED this 15th day of DEC., 2009.

Steven A. Dietrich

Steven A. Dietrich, Regional Director
Blue Ridge Regional Office
Department of Environmental Quality

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J.W. Holdings, Inc. voluntarily agrees to the issuance of this Order.

By: _____
J. W. Holdings, Inc.
John A. White, President

Date: 9/21/09

Commonwealth of Virginia; City/County of Bedford

The foregoing document was signed and acknowledged before me this 21st day of September, 2009, by John A. White, President of J. W. Holdings, Inc.

JEFFREY CHARLES BURDETT NOTARY PUBLIC MY COMMISSION NUMBER REG. #300387 COMMONWEALTH OF VIRGINIA

Notary Public

My commission expires: September 30, 2009

Craddock Oaks Developers, Inc. voluntarily agrees to the issuance of this Order.

By: _____
Craddock Oaks Developers, Inc.
John A. White, President

Date: 9/21/09

Commonwealth of Virginia; City/County of Bedford

The foregoing document was signed and acknowledged before me this 21st day of September, 2009, by John A. White, President of Craddock Oaks Developers, Inc.

JEFFREY CHARLES BURDETT NOTARY PUBLIC MY COMMISSION NUMBER REG. #300387 COMMONWEALTH OF VIRGINIA

Notary Public

My commission expires: September 30, 2009

APPENDIX A
SCHEDULE OF COMPLIANCE

1. No later than 30 days after the effective date of this Order, the Responsible Parties shall submit an approvable Corrective Action Plan (CAP) for state waters on the Property that have been impacted without a VWP permit. The CAP must be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters in accordance with 9 VAC 25-210-116. The Responsible Parties shall respond to any DEQ Notice of Deficiency regarding the CAP within fourteen (14) calendar days. All corrective action under the CAP shall be completed not later than 270 days after the effective date of this Order.

2. Upon DEQ approval of the CAP, the Responsible Parties shall begin implementation of the CAP in accordance with the schedule contained therein. Any changes to the approved Final CAP or schedule shall not be initiated without advance notice to and approval by DEQ. The Responsible Parties shall complete the CAP in accordance with its terms.

    a. If the performance criteria specified in the Final CAP are not achieved at the end of the applicable monitoring period, the Responsible Parties shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears that the criteria could not be achieved. If DEQ thereafter so directs, the Responsible Parties shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by Responsible Parties in accordance with the schedule set forth in the alternative CAP.

    b. If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then the Responsible Parties shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or, as applicable, any previously submitted alternative CAP. The Responsible Parties shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. The Responsible Parties shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.

3. The Responsible Parties shall submit all requirements of Appendix A of this Order to:

    Robert Steele
    VA DEQ - Blue Ridge Regional Office

3019 Peters Creek Road
Roanoke, VA 24019

Phone: (540) 562-6777
e-mail: Robert.Steele@deq.virginia.gov