COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTH CENTRAL REGIONAL OFFICE
7705 Timberlake Road, Lynchburg, Virginia 24502
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Thomas L. Henderson
Regional Director

STATE WATER CONTROL BOARD

ENFORCEMENT ACTION

CONSENT SPECIAL ORDER

ISSUED TO

Danville Investors, LLC – Franklin Turnpike Apartments

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185, and 62.1-44.15(8a) and (8d), between the State Water Control Board and Danville Investors, LLC for the purpose of for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

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

1. "ACOE" means the Army Corps of Engineers.
2. "Board" means the State Water Control Board, a permanent citizen board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
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. "Order" means this document, also known as an Consent Special Order.
6. "Project" means the Franklin Turnpike Apartments, developed by Danville Investors, LLC.
7. "SCRO" means the South Central Regional Office of the DEQ, located in Lynchburg, Virginia.
8. "VWPP" means the Virginia Water Protection Program, which addresses protection of streams and wetlands in the Commonwealth, and is authorized under Va. Code § 62.1-44.15:20.

SECTION C: Findings of Fact and Conclusions of Law

1. The developer of the Project, Danville Investors, LLC, represented by Mr. Alex Perkins, had the proposed development site inspected and delineated in February 2007 by the ACOE, which resulted in a determination that 273 linear feet of stream would be impacted by the development. This is below the 300 foot threshold for an individual permit; therefore, the developer's consultants proceeded with making a joint permit application to the ACOE and DEQ for coverage. The permit application was not received at DEQ-SCRO until May 4, 2007, after the Project was completed.
2. Based on a site inspection conducted on April 30, 2007, the Department issued Notice of Violation No. NOV-07-06-SCRO-004 to Mr. Perkins and Danville Investors, LLC for unauthorized filling of a stream without first obtaining a VWP permit from the State Water Control Board.
3. Va. Code § 62.1-44.15:20 provides *inter alia*:
   A. Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to:
   1. Excavate in a wetland;

4. The Virginia Administrative Code § 9 VAC 25-660-50, Notification, provides *inter alia*:
   A. Notification to the board will be required prior to commencing

construction, as follows:

2.b. For all other projects that are not subject to subdivision 2 c of this subsection, the application shall include the information required by subdivisions 1 thru 9, 13, 15, 20, and 21 of 9 VAC 25-660-60 B., and documentation that verifies the quantity and type of impacts.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted in Va. Code § 62.1-44.15(8a) and (8d), orders Danville Investors, LLC, and Danville Investors, LLC voluntarily agrees to pay a civil charge of **$1,820.00** within 30 days of the effective date of this Order, in settlement of the violations of this Order. The payment shall include Danville Investors, LLC Federal Identification Number, and shall reference that it is being made as a requirement of 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 1104
Richmond, VA 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Danville Investors, LLC, for good cause shown by Danville Investors, LLC, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified by the NOV cited 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 violations that occur after this Order is issued; (2) seeking subsequent remediation of the Project as may be authorized by law; or (3) taking subsequent action to

enforce the terms of this Order. Nothing herein shall affect enforcement actions by other state, local, or federal regulatory authorities, whether or not arising out of the same or similar facts.

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

4. Danville Investors, LLC 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 the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to 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.

5. Failure by Danville Investors, LLC 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.

6. 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.

7. Danville Investors, LLC 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 other such occurrence. Danville Investors, LLC shall demonstrate that such circumstances resulting in noncompliance were beyond the control of Danville Investors, LLC and not due to a lack of good faith or diligence. Danville Investors, LLC 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 notify the Regional Director verbally within one (1) business day and in writing within five (5) business days of learning of any condition listed above, which Danville Investors, LLC 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.

8. 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 the Director, or his designee, and Danville Investors, LLC.

10. This Order shall continue in effect until the Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Danville Investors, LLC.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Danville Investors, LLC 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, Danville Investors, LLC consents to the issuance of this Order.

And it is so ORDERED this 10th day of April, 2007.

Thomas L. Henderson, Director
South Central Regional Office
Department of Environmental Quality

Danville Investors, LLC consents to the issuance of this Order.

Date: 12/20/07 By: _____
Alex Perkins, Danville Investors, LLC

Commonwealth of Virginia
City/County of Pittsylvania
The foregoing document was signed and acknowledged before me this 20th day

of December, 2007, by Alex Perkins, Danville Investors, LLC.

_____
Notary Public

My commission expires: My Commission Expires October 31, 2010.

Notary Registration Number:
321531

JO ANN D. MOTLEY
COMMONWEALTH OF VIRGINIA
NOTARY PUBLIC

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