COMMONWEALTH of VIRGINIA

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

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO LSH DEVELOPMENT OF RICHMOND, LLC

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 , 62.1-44.15(8a) and (8d), and §62.1-44.34:20 between the State Water Control Board and LSH Development of Richmond, LLC, 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 meaning 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 §§ 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. "LSH" means LSH Development of Richmond, LLC, a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

6. "NOV" means Notice of Violation.

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

8. "Permit" means Virginia Water Protection General Permit Number WP1-04-2659 issued to LSH Development of Richmond, LLC on May 13, 2005.

9. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

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

11. "Subdivision" means the Lake Jordan Subdivision, located at the intersection of US 1 and SR 613 in Dinwiddie County, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1) On May 13, 2005, DEQ issued Virginia Water Protection ("VWP") General Permit Number WP1-04-2659 ("Permit") to LSH Development of Richmond, LLC ("LSH"). The Permit authorized permanent and temporary impacts to State waters, including wetlands, associated with the construction of Lake Jordan Subdivision ("Subdivision").

2) DEQ staff inspected the Property on October 1 and 3, 2007, and observed that impacts to surface waters exceeded permit limits by 542 linear feet of stream channel and 0.81 acre of wetlands, as detailed below:

   a. Unmaintained erosion and sedimentation controls and inadequate slope stabilization resulted in the deposition of 1 to 2.5 feet of sediment in wetlands and streams;
   b. A sewer crossing of a wetland and stream area, which was designated as a temporary impact in the Permit, was filled with concrete;
   c. A forested wetland area which DEQ authorized to be converted to an emergent wetland area was filled with riprap;
   d. Construction and demolition debris was placed in two emergent wetland areas.

3) Va. Code § 62.1-44.15:20.A and 9 VAC 25-210-50.A of the Regulation prohibit impacts to surface waters, including wetlands, unless in compliance with a VWP Permit issued by DEQ.

4) Part I.C.1 of the Permit requires that activities authorized by the Permit minimize impacts on instream beneficial uses defined by Va. Code §62.1-10(b). Part I.C.7 of the Permit requires that activities be accomplished in a manner to minimize construction or waste materials from entering surface waters.

5) LSH is required by 9 VAC 25-210-90.A to abide by the terms and conditions of its Permit.

6) DEQ issued Notice of Violation ("NOV") No. 07-10-PRO-704 to LSH on October 18, 2007 for the above-described violations.

7) A meeting to discuss the NOV was held on October 24, 2007. During the meeting, representatives of LSH presented a conceptual corrective action plan. DEQ agreed to the concepts presented in the plan, and LSH agreed to submit a final, detailed version of the plan and a schedule for work.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d) and §62.1-44.34:20, orders LSH, and LSH agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders LSH, and LSH voluntarily agrees, to pay a civil charge of $23,400 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for LSH. 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, Virginia 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of LSH, for good cause shown by LSH, 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 LSH by DEQ on October 18, 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 Property 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, LSH admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. LSH 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. LSH 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 it waives 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 LSH 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. LSH 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. LSH shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. LSH 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 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 the LSH. Notwithstanding the foregoing, LSH 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 LSH. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve LSH 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, LSH Development of Richmond, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of April 24, 2008.

Gerard Seeley, Jr., Regional Director
Department of Environmental Quality

LSH Development of Richmond, LLC voluntarily agrees to the issuance of this Order.

By: _____
Steven F. Valdivieso
LSH Development of Richmond, LLC

Date: 12-10-07

Commonwealth of Virginia
City/~~County~~ of Norfolk

The foregoing document was signed and acknowledged before me this 10th day of December, 2007, by Steven Valdivieso, who is
(name)

Senior Operat of LSH Development of Richmond, LLC, on behalf of LSH.
(title) manager

Susan Thomas
Notary Public

My commission expires: August 31, 2010
ID # 316585

APPENDIX A
LSH DEVELOPMENT OF RICHMOND, LLC

1. **No later than December 5, 2007**, LSH Development of Richmond, LLC shall submit a Corrective Action Plan ("Plan") to DEQ. The plan shall propose measures to restore impacted wetlands and streams on the Property and mitigate for those impacts that DEQ has agreed cannot be restored without causing further damage to the resource. LSH shall incorporate additional items to or modifications of the plan upon request by DEQ. Upon DEQ approval, LSH shall implement the Plan in accordance with the schedule therein. Any changes to the approved Plan or schedule shall not be implemented without advance notice to and approval by DEQ.

2. LSH Development of Richmond, LLC shall monitor the restored wetlands and streams annually until at least until 1 year after all land disturbance is complete within that watershed, in accordance with the approved Plan. Monitoring reports shall be prepared in accordance with the approved Plan and shall be submitted no later than December 31st of each monitoring year.

    a. If the restored wetland or stream areas fail to meet the specified success criteria during any monitoring year other than the final monitoring year, or if visual observations conclude that the site is not progressing towards the overall restoration goals, the reasons for this failure shall be determined and a corrective action plan (including proposed actions, a schedule, and a monitoring plan) shall be submitted to DEQ for approval with or before that year's monitoring report. The DEQ-approved corrective action plan shall be implemented by the permittee in accordance with the approved schedule.

    b. If all success criteria have not been met by the last monitoring year, or if observations conclude that the site has not met the overall restoration goals, LSH shall submit an analysis of the underlying reasons for restoration failure with the final year's monitoring report. If corrective action will rectify the deficiencies, such actions shall be implemented in accordance with a DEQ-approved corrective action plan submitted with the analysis. Annual monitoring shall continue until two sequential annual reports indicate that all success criteria have been satisfied and the restoration site has met the overall restoration goals. If the analysis indicates that corrective action cannot sufficiently address the reasons for site failure, LSH shall submit with the analysis an alternate mitigation plan for the unsuccessfully restored wetlands and/or streams. The proposed mitigation shall be in accordance with the applicable provisions of provisions of § 62.1- 44.15:5 E of the Code of Virginia and 9 VAC 25-210-115. Proof of purchase of mitigation bank credits or contribution to an in-lieu fee fund shall be submitted within 60 days of alternate mitigation plan approval by DEQ.

3. Unless otherwise indicated, all requirements of Appendix A of this Order shall be submitted to:

   Allison C. Dunaway
   VA DEQ – Piedmont Regional Office
   4949-A Cox Road
   Glen Allen, Virginia 23060
   Fax: (804) 527-5106
   Email: acdunaway@deq.virginia.gov