



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 Fax (804) 527-5106
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO THE BOARD OF SUPERVISORS OF NEW KENT COUNTY FOR NEW KENT COUNTY AIRPORT

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and New Kent County, regarding the New Kent County Airport, New Kent County, Virginia, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and 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. "County" means New Kent County Board of Supervisors, a political subdivision of the Commonwealth of Virginia. County is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "County Airport" means the New Kent County Airport, located at 6901 Terminal Road, Quinton, Virginia.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "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.
7. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
8. "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.
9. "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.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued 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.
13. "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.
14. "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." Va. Code § 62.1-44.3; 9 VAC 25-210-10

15. "Property" or "Parcel" means the County Airport +/- 229.34 acre parcel of land located at 6901 Terminal Road, Quinton, Virginia, on which the County Airport is located. The Property is owned by the County.
16. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
17. "Regulations" means the VWP Permit Program Regulations, 9 VAC 25-210 *et seq.*
18. "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.
19. "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 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
20. "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. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
21. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
22. "USACE" means the United States Army Corps of Engineers.
23. "Va. Code" means the Code of Virginia (1950), as amended.
24. "VAC" means the Virginia Administrative Code.
25. "VWP" means Virginia Water Protection.
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. On August 9, 2013, DEQ received a report from a resident downstream from the County Airport, that lake water became brown after rain events.
2. On August 21, 2013, DEQ staff inspected property upstream of the lake and observed the following land clearing and land disturbing activities at the County Airport:
 - a. Poor stabilization of the site;
 - b. Poor maintenance of erosion and sediment controls;
 - c. Erosion and sediment controls at the culvert between sediment basins 7 and 8 failing;
 - d. Sediment escaping containment and flowing into an unnamed tributary (UT) to Toe Ink Swamp;
 - e. Sediment deposited into a minimum of 300 LF of the UT to a depth of 6 inches and into a minimum of 0.07 acres of adjacent forested wetlands to dept of 4 inches; and
3. Although DEQ had issued a Stormwater Construction General Permit to the County authorizing land clearing and/or land disturbing activities at the County Airport property, neither DEQ nor the U.S. Army Corps of Engineers (USACE) had issued a Permit to the County authorizing impacts to wetlands or surface waters at the County Airport property.
4. Va. Code §62.1-44.15:20(A) states “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; 2. On or after October 1, 2001, conduct the following in a wetland; a. New activities to cause draining that significantly alters or degrades existing wetland acreage or function; b. Filling or dumping; c. Permanent flowing or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.”
5. 9 VAC 25-210-50(A) states that “Except in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, withdraw surface water, otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities or cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanently flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.”

6. On December 17, 2013, DEQ issued NOV No. 13-10-PRO-702 to the County for the above described violations. The County called DEQ on December 17, 2013 and discussed the violations cited in the NOV.
7. On March 19, 2014, DEQ staff met with the County at the airport property and inspected the site. During the site inspection, DEQ staff observed unauthorized impacts to wetlands. DEQ staff observed that 0.35 acre of forested wetland had been cleared by the County. The County indicated that the land clearing activity was initiated in order to comply with Federal Aviation Administration obstruction removal requirements. This activity resulted in the permanent conversion of forested wetlands to scrub-shrub wetlands.
8. Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.A of the VWP Permit Regulations state that except in compliance with a permit no person shall dredge, fill or discharge any pollutant into or adjacent to surface waters, excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: new activities that cause significant alteration or degradation of existing wetland acreage or functions.
9. On April 4, 2014, DEQ issued NOV No. 2014-04-PRO-700 to the County for the unauthorized impacts to 0.35 acres of forested wetlands at the County Airport.
10. On May 29, 2014, the County met with DEQ in response to the NOV. The USACE was included in the meeting via conference call. At the meeting, the County and DEQ staff discussed corrective actions to bring the County back into compliance with the law and regulations. The County also reported at the meeting that an additional 0.44 acres of wetland impacts that had occurred at the site.
11. During the next several months, DEQ and the County discussed various options to resolve the violations. On September 15, 2014, the County met with DEQ to propose a Supplemental Environmental Project (SEP) to address the violations.
12. On September 17, 2014, DEQ staff again inspected the site to evaluate sedimentation impacts identified in the December 17, 2013 NOV and the evaluation of impacts to the cleared forested wetland in the April 4, 2014 NOV. DEQ staff observed that the majority of the area along the impacted reach identified in the December 2013 NOV was currently colonized by herbaceous wetland vegetation; and that the area of cleared forested wetlands identified in the April 2014 NOV was also in the process of self-restoration by the growth of herbaceous wetland species.
13. On November 24, 2014, the County provided a proposed SEP to DEQ for approval.
14. Based on the results of the site inspections, review of the permit file, and meetings, the Board concludes that the County has violated Va. Code § 62.1-44.15:20.A; and 9 VAC 25-210-50.A as described in Section C, above.

15. On November 24, 2014, the County provided DEQ with a proposed SEP to address compensation for 0.77 acres of wetland impacts, and to propose an additional 0.77 acres of wetland mitigation as a SEP to address the violations described in Section C, above.

SECTION D: Agreement and Order

By virtue of the authority granted it in Va. Code §§ 62.1-44.15, and upon consideration of Va. Code § 10.-1186.2, the Board orders the County and the County agrees to:

1. To perform the actions described in Appendices of the Order, and
2. To a civil charge of \$35,750 in settlement of the violations cited in this Order, to be paid as follows:
 - a. The County shall pay \$4,180 of the civil charge within 30 days of the effective date of 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

The County shall include its Federal Employer Identification Number (FEIN) 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, the County shall be liable for attorneys' fees of 30% of the amount outstanding.

- b. The County shall satisfy \$31,570 of the civil Charge by satisfactorily completing the SEP described in Appendices.
- c. The net project costs of the SEP to the County shall not be less than the amount set forth in Paragraph D.2.b. If it is, the County shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

- d. By signing this Order the County certifies that it has not commenced performance of the SEP.
- e. The County acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by the County to a third party, shall not relieve the County of its responsibility to complete the SEP as described in this Order.
- f. In the event it publicizes the SEP or the SEP results, the County shall state in a prominent manner that the project is part of a settlement of an enforcement action.
- g. The Department has the sole discretion to:
 - i. Authorize any alternate, equivalent SEP proposed by the Facility; and
 - ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
- h. Should the Department determine that the County has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify the County in writing. Within 30 days of being notified, the County shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the County for good cause shown by the County, or on its own motion pursuant to the Administrative Process Act, 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 the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the County admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The County 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. The County declares it has received fair and due process under the Administrative Process Act 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 modify, rewrite, amend, or enforce this Order.

6. Failure by the County 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 County 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The County shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The County 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 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 verbally within 24 hours and in writing within three business days, 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.

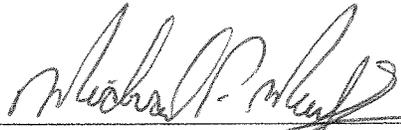
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the County. Nevertheless, the County agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after the County has completed all of the requirements of the Order;

- b. The County petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the County.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the County from its 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 County 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 County certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind the County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of the County
- 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 than those expressed in this Order.
- 15. By its signature below, New Kent County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2ND day of MARCH, 2015.



Michael P. Murphy, Regional Director
Department of Environmental Quality

The New Kent County Board of Supervisors voluntarily agrees to the issuance of this Order.

Date: 12/30/14 By: [Signature] Chairman
(Person) (Title)
Board of Supervisors

Commonwealth of Virginia
City/County of New Kent

The foregoing document was signed and acknowledged before me this 30th day of
December, 2014, by Thomas W. Evelyn who is
chairman of the New Kent County Board of Supervisors.

Wanda Faye Watkins
Notary Public
315272
Registration No.

My commission expires: 12/31/2018

Notary seal:



APPENDIX A

1. Purchase of Wetland Credits

Not later than 30 days from the effective date of this Order, the County shall submit proof of purchase of 0.77 wetland credits from a DEQ-approved mitigation bank that is authorized and approved by DEQ to sell credits in the area in which the impacts occurred and has credits available (as released by DEQ) to achieve no-net-loss of existing wetland acreage and no-net -loss of function in all surface waters in accordance with 9 VAC 25-210-116.

2. DEQ Contact

Unless otherwise specified in this Order, the County shall submit all requirements of Appendices of this Order to:

Cynthia Akers
Enforcement Specialist
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, VA 23060
Phone: (804) 527-5079
Fax: (804) 527-5106
Cynthia.Akers@deq.virginia.gov

APPENDIX B

NEW KENT COUNTY SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

In accordance with Va. Code § 10.1-1186.2, the County shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix. As used in this Order and Appendix, SEP means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

1. The SEP to be performed by the County is to purchase an additional 0.77 acres of wetland credits from a DEQ approved compensatory mitigation wetland bank within the same watershed as the County Airport. The proposed SEP supports DEQ's goals to ensure a-no-net-loss of wetland and stream resources within the Airport watershed. This additional purchase of compensatory wetland mitigation credits aids the state's environmental interests by permanently protecting the state's valuable aquatic resources.
2. The SEP shall be completed within 30 days of the effective date of the Order.
3. The County shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. The County shall submit the final report and certification to the Department within 30 days from the effective date of the Order.
4. If the SEP has not or cannot be completed as described in the Order, the County shall notify DEQ in writing no later than 15 days beyond the due date. Such notification shall include:
 - a. an alternate SEP proposal, or
 - b. payment of the amount specified in Paragraph D.2.b as described in Paragraph D.2.a.
5. The County hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.
6. The County shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of an invoice or similar document as proof of payment within 15 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from the County's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

7. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to Cynthia Akers.

APPENDIX C

Analysis of Proposed Supplemental Environmental Project Va. Code § 10.1-1186.2

Source/Facility/Regulated Party:

New Kent County Board of Supervisors

Project Description:

This proposed supplemental environmental project ("SEP") is the result of Notices of Violation ("NOVs") issued by the Virginia Department of Environmental Quality ("DEQ") to New Kent County (the "County") on December 17, 2013 and April 4, 2014 for impacts to streams and wetlands at the County's General Aviation Airport (the "County Airport"). The impacts cited in the NOVs stem from activities that were conducted by the County Airport as part of a mandatory obstruction removal project under Part 77 of the Federal Aviation Administration's Federal Aviation Regulations.

Specifically, the County, through its contractors, conducted unpermitted impacts to wetlands and streams during the course of completing this obstruction removal project. The SEP will offset the resulting civil penalty by purchasing 0.77 acres of wetland credits. This purchase of wetland credits will be from an approved mitigation bank within the same 8-digit hydrologic unit code ("HUC") as the County Airport (HUC 02080206) and will benefit the Lower James watershed in which the County Airport is located.

1. **Explain in detail how the project is environmentally beneficial and, if possible, provide a quantifiable measure of the benefit (e.g., pounds of nutrient and/or emission reduction):**

The County is proposing as a SEP the purchase of 0.77 acres of wetlands credits within the same watershed as the County Airport. The County is not required to perform this proposed SEP, or any portion thereof, under any applicable state, local or federal rules or regulations. This SEP proposal specifically involves the purchase of additional (i.e., those going beyond compliance) credits from a compensatory mitigation bank established and approved in accordance with the DEQ's regulations at 9 VAC 25-210-116. As such, the proposed SEP herein directly supports DEQ's goal of ensuring no net loss of wetland and stream resources within each of the state's watersheds. Compensatory mitigation bank credits are recognized at both the state and federal level as an acceptable and effective form of compensating for wetland impacts. By purchasing these additional 0.77 credits, the County will be ensuring that any unpermitted impacts at the County Airport are more than offset. This manner of SEP is fully consistent with and directly supportive of DEQ's no net loss policy and, in fact, would even go beyond it, effectively ensuring a net benefit to wetlands within the surrounding watershed. This proposed SEP would thus serve the state's environmental interests by promoting the restoration and permanent protection of critical aquatic resources.

2. **A SEP may only be a partial settlement: show what initial civil charge was computed, along with the appropriate SEP amount and final civil charge figure:**

Civil Charge/Penalty without a SEP: \$35,750.00
Minimum Payment Amount with a SEP: \$3,575.00
Projected Net Project Costs: \$31,570.00
SEP Mitigation Amount: \$31,570.00
Final Monetary Civil Charge/Penalty: \$4,180.00

3. Explain how the SEP is not otherwise required by law and is solely the result of the settlement of an alleged violation:

This SEP is being proposed by the County specifically in connection with, and solely as a result of, settlement of the violations of State Water Quality Regulations in the NOVs listed above under a DEQ-issued consent order. The performance of this proposed SEP, or any portion thereof, by the County is not otherwise required under any federal, state or local statute, rule, regulation, ordinance, order or permit condition.

4. Is there a reasonable geographic nexus?

Yes, the County is proposing as a SEP the purchase of credits from an approved compensatory mitigation bank that is located in relative proximity to, and within the same 8-digit HUC as, the County Airport property where the unpermitted impacts occurred.

5. Check all qualifying categories listed below that may apply to the SEP:

Public Health		Environmental Restoration and Protection	x
Pollution Prevention		Environmental Compliance Promotion	
Pollution Reduction		Emergency Planning and Preparedness	

6. Does the SEP require a significant amount of DEQ management, resource investment or evaluation such that DEQ is unable to provide active oversight?

No, the proposed SEP contemplates only the execution and completion of a single private transaction directly by and between the County and the mitigation bank sponsor, thus the SEP can be implemented almost entirely by the County and would not require significant DEQ management, resource investment or evaluation. Once the transaction affecting the sale and transfer of the specified amount of mitigation bank credits to the County is completed, the County will provide DEQ a copy of a Bill of Sale (to be prepared by the bank sponsor) confirming the sale and transfer of all 0.77 credits to the County. Significant management, oversight, or other involvement by DEQ in SEP implementation should not be necessary and is not anticipated outside of final review and approval upon receipt of the above-referenced Bill of Sale.

7. Does the proposed SEP require a significant amount of DEQ time and resources for negotiation, administration, SEP oversight or other management activities in comparison to the value of the SEP?

No, the proposed SEP contemplates only the execution and completion of a single private transaction directly by and between the County and the mitigation bank sponsor, thus the SEP can be implemented almost entirely by the County and would not require significant DEQ management, resource investment or evaluation. Once the transaction affecting the sale and transfer of the specified amount of mitigation bank credits to the County is completed, the County will provide DEQ a copy of a Bill of Sale (to be prepared by the bank sponsor) confirming the sale and transfer of all 0.77 credits to the County. Significant management, oversight, or other involvement by DEQ in SEP implementation should not be necessary and is not anticipated outside of final review and approval upon receipt of the above-referenced Bill of Sale.

8. Does the Responsible Party have the ability or reliability to complete the proposed SEP and demonstrated an ability or willingness to comply with existing requirements?

Yes, the County has counsel to help facilitate the purchase of the mitigation credits, and has a willingness to comply with the requirements to complete the proposed SEP.

9. Each of the following factors MUST be considered. Respond to each:

- ***Net Project Costs (zero out all State or Federal government loans, grants and tax credits for project) (net cash flow to party should not be positive). Explain:***

The County will be funding implementation of the entire SEP directly, thus the Net Project Cost in this case is equal to the cost of the 0.77 mitigation credits that will be purchased by the County. The cost of these credits is estimated \$41,000 per single credit (see attached quote from Eastern Henrico Mitigation Bank). The County will purchase 0.77 credits at \$41,000 for a total Net Project Cost of \$31,570.

- ***Benefits to the Public or the Environment (should exceed VEERF value; include any Community Involvement). Explain:***

This SEP proposal specifically contemplates the purchase of additional (i.e., those going beyond compliance) credits from a compensatory mitigation bank established and approved in accordance with the DEQ's regulations at 9 VAC 25-210-116. As such, the proposed SEP herein directly supports DEQ's important statewide goal of ensuring no net loss of wetland and stream resources within each of the state's watersheds and the associated public benefits. This manner of SEP is fully consistent with and directly supportive of DEQ's no net loss policy and, in fact, goes beyond it, effectively ensuring a net benefit to wetlands within the surrounding watershed and a net improvement of environmental and public health conditions within this area. This proposed SEP would serve the state's broader environmental interests by promoting the restoration and permanent protection of critical aquatic resources.

In addition, the SEP being proposed here – the purchase of credits from a nearby mitigation bank – would direct substantial dollars towards an established and reliable form of stream and wetland protection that ensures meaningful and localized environmental benefits relative to the particular types of impacts. These are dollars which, in the absence of the SEP, would be paid into the Virginia Environmental Emergency Response Fund ("VEERF"). Compared to this traditional/default approach which lacks the same assured nexus to the impact, the County's proposed SEP would translate into much more direct and tangible environmental benefits, particular at the local and watershed level.

- ***Innovation. Explain:***

The County's proposed SEP is innovative as it implements an alternative form of remedy that deviates from the usual settlement construction in this context – that is, payment and transfer of the full civil penalty amount into VEERF. Based on the circumstances of this particular case, the alternate approach being proposed herein would be far more effective in offsetting and remedying of the impacts and would secure more favorable and significant public benefits.

- ***Impact on Minority or Low-Income Populations. Explain:***

N/A

- ***Multimedia Impact. Explain:***

N/A

- **Pollution Prevention. Explain:**

N/A

Division of Enforcement, Other RO, Program – Concurrence/Consultation
Recommended/Not Recommended



(DEQ Regional Staff)

SEP Approved/Disapproved
(Subject to Execution of the Order)



(DEQ Regional Director)

**Dominion Golf of VA, LLC
Eastern Henrico Mitigation Bank (EHMB)**

AFFIDAVIT OF CREDIT SALE

DOMINION GOLF OF VA, LLC, a Virginia Limited Liability Company (the "Company"), hereby certifies the following:

1. Pursuant to that certain Purchase Agreement dated December 18, 2014, (the "Agreement"), between the Company (as Seller) and New Kent County ("Purchaser"), the Company, for the benefit of Purchaser, agreed to sell Wetlands Mitigation Credits to Purchaser from the Company's Eastern Henrico Mitigation Bank.
2. The Company and the Purchaser, as of the date hereof, have closed the transaction contemplated by the Agreement and the Company has sold to Purchaser 1.54 Wetlands Mitigation Credits.

IN WITNESS WHEREOF, the Company has caused this Affidavit to be executed by its duly authorized agent as of Dominion Golf of VA, LLC.

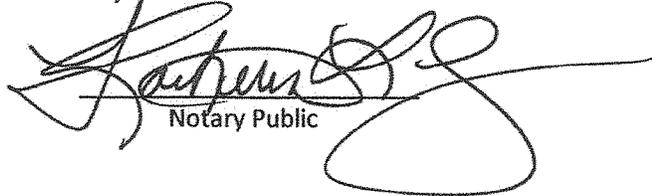
DOMINION GOLF OF VA, LLC

By: Al S. Mastri, Jr.
Authorized Agent

Date: 12/23/14

Sworn to and subscribed before me this 23rd day of DECEMBER 2014, by ALVIN S. MASTRI, JR., Authorized Agent, on behalf of Dominion Golf of VA, LLC, a Virginia Limited Liability Company.

My commission expires: JUNE 30, 2016


Notary Public

Solid Waste Permit #: _____
DEQ Permit #: _____
Permittee: New Kent County
Wetlands Mitigation Credits: 1.54
Stream Mitigation Credits: 0 linear feet