



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

CENTEX REAL ESTATE CORPORATION

dba CENTEX HOMES

Chesapeake, VA

VWP General Permit No. WP4-04-0797

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 Centex Homes, 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. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means 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. "Order" means this document, also known as a Consent Special Order.

6. “Centex Homes” means Centex Real Estate Corporation, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. “Permit” means Virginia Water Permit General Permit for Impacts from Development and Certain Mining Activities Under the Virginia Water Protection Permit and the Virginia State Water Control Law No. WP4 which became effective October 1, 2001.

SECTION C: Finding of Facts and Conclusions of Law

1. Centex Homes is the owner/developer of Hawk’s Landing, a 31-lot residential subdivision. Centex Homes is subject to the requirements of the Permit, through VWP General Permit Authorization No. WP4-04-0797, which has an authorization effective date of October 18, 2004 and an authorization expiration date of October 17, 2009. The Permit authorizes the clearing/filling/grading of 0.69 acres of forested wetlands for roads, footpaths, lots, and a storm water sewer easement associated with the Hawk’s Landing development.
2. Hawk’s Landing is bounded by Hampton Highway 134 to the north, the Davis Forge single family subdivision to the south, and one parcel east of Owen Davis Boulevard, located in York County, Virginia.
3. Sections 62.1-44.5 and 62.1-44.15:5 of the Code contain requirements which include, but are not limited to, the issuance of a permit prior to the discharge of pollutants into State waters, excavating in a wetland, conducting new activities which significantly alters or degrades existing wetland acreage or functions, and/or filling wetlands.
4. On April 1, 2004, Centex Homes submitted to DEQ a joint permit application for the development of the Hawk’s Landing subdivision. The application included a wetlands delineation indicating forested, jurisdictional wetlands subject to regulation under the Clean Water Act were located on the property.
5. On May 23, 2005, Kerr Environmental Services, authorized agent of Centex Homes, notified DEQ of the unauthorized clearing of wetlands at Hawk’s Landing. Centex homes reports the unauthorized cleared area was surveyed to be 0.98 acres in size.
6. On May 31, 2005, DEQ inspected Hawk’s Landing in response to notification by the Army Corps of Engineers and Kerr Environmental that unauthorized clearing and stumping

of wetlands had occurred at the site. The inspection revealed that approximately one acre of forested wetlands which was not authorized by the Permit had recently been cleared. The cleared area bisected an approximately 2.5 acre wetland area which was to remain undisturbed pursuant to the Permit.

7. Va. Code §62.1-44.5(A) prohibits excavating in a wetlands without a permit or altering the physical, chemical, or biological properties of state waters, making them detrimental to public health or animal/aquatic life. Centex Homes violated Va. Code 62.1-44.5(A) by excavating and clearing approximately one acre of forested wetlands which was not authorized by the Permit.
8. On June 14, 2005, DEQ issued Notice of Violation No. 05-06-TRO-001 to Centex Homes advising Centex Homes of the observations made during the May 31, 2005 site visit and applicable statutory citations relating to the unauthorized clearing of wetlands.
9. On September 15, 2005, DEQ was informed by Kerr Environmental that they had no pre-construction photographs of the unauthorized impacted wetland site at Hawk's Landing.
10. By letter dated September 21, 2005, DEQ was notified that construction activities at the Hawk's Landing subdivision began the first week in May 2005.
11. DEQ received the May and June 2005 construction photograph monitoring narrative reports for Hawk's Landing on September 21, 2005. The May 2005 pictures do not show flagging of the nonimpact wetland areas and do not include pre-construction photographs of the unauthorized impacted area. In addition, DEQ was notified that the pictures were not taken from established photograph stations.
12. Part I.C.10 of the Permit requires "All nonimpacted surface waters within the project that are within 50 feet of any clearing, grading, or filling activities shall be clearly flagged or marked for the life of the construction activity within that area. Centex Homes reports that all wetlands and clearing limits were flagged.
13. Part II.D.1 of Permit requires that photographic stations be established to document construction aspects of project activities within impact areas and photographs should document preconstruction conditions, activities during construction, and post-construction conditions. Centex Homes violated their Permit by not providing photographs from established photo stations which document the pre-construction activities and the on-going construction activities.
14. Part II.D.1 of the Permit requires construction photographic monitoring at the end of the first, second, and twelfth months of construction, and then annually for the remainder of

the construction project.

15. Part II.E.2 of the Permit requires the Board be notified in writing by certified letter at least 10 days prior to the start of construction activities authorized by the Permit. Centex Homes violated their Permit by not providing the notification letter 10 days prior to the start of the construction activities authorized by the Permit.
16. Part II.E.3 of the Permit requires construction monitoring reports be submitted to the Board within (30) days of each monitoring event. After construction begins, reports shall include “properly labeled photographs...showing representative construction activities, including but not limited to flagging nonimpact wetland areas.” Centex Homes violated their Permit by not timely providing the required construction monitoring reports with photographs documenting the flagging of nonimpact wetland areas as specified by the Permit.
17. On September 30, 2005 DEQ issued Notice of Violation No. 05-09-TRO-001 to Centex Home advising of the applicable Permit requirements regarding construction monitoring and reporting. On October 5, 2005, Kerr Environmental Services, on behalf of Centex Homes, responded to the Notice of Violation.
18. Centex Homes cooperated with DEQ in the settlement of the above listed violations. Centex Homes has voluntarily contributed \$39,788 to the Virginia Aquatic Resources Trust Fund providing 0.5:1 compensation for the functional losses associated with the unauthorized wetland clearing at Hawk’s Landing.
19. On October 12, 2005, Centex Homes submitted to DEQ a wetland restoration plan for the unauthorized wetland impacts at Hawk’s Landing for DEQ’s review, comment, and approval. By letter dated October 12, 2005, DEQ approved the submitted restoration plan.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted by Va. Code § 62.1-44.15(8a) and (8d), orders Centex Homes, and Centex Homes voluntarily agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders Centex Homes, and Centex Homes voluntarily agrees, to pay a civil charge of \$7,200, within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include Centex Homes’ 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 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Centex Homes, for good cause shown by Centex Homes, 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 above referenced Notices of Violation. 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, Centex Homes admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Centex Homes 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. Centex Homes 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 Centex Homes 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. Centex Homes shall be responsible for failure to comply with any of the terms and conditions by this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Centex Homes shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Centex Homes 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.

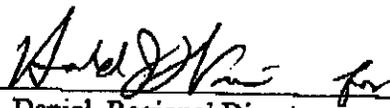
Failure to so notify the Regional Director within 48 hours of learning of any condition above, which Centex Homes intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

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 Centex Homes. Notwithstanding the foregoing, Centex Homes 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 terminate the Order in his or its sole discretion upon 30 days written notice to Centex Homes. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Centex Homes 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, Centex Homes voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of December 7th, 2005.



Francis L. Daniel, Regional Director
for Robert G. Burnley, Director, Department of
Environmental Quality

Centex Real Estate Corporation, dba Centex Homes, voluntarily agrees to the issuance of this Order.

By: *David G. Murray*
Date: *10/13/05*

Commonwealth of Virginia
City/County of *Chesapeake*

The foregoing document was signed and acknowledged before me this *13* day of
October, 2005, by *David G. Murray*, who is
(name)

Division Manager of Centex Real Estate Corporation, on behalf of Centex Real Estate
(title)
Corporation.

Tommy A. Connors
Notary Public

My commission expires : *7/31/09*



APPENDIX A

CENTEX HOMES

Centex Homes shall:

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

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

2. Comply with Part II.D.1 of the Permit and establish photo stations to document construction activities within impact areas as required by the Permit.
3. Comply with Part II.E.3.b of the Permit and provide photographs of the flagging of the remaining nonimpact wetlands area to be protected, as required by the Permit.
4. Implement the wetland restoration plan in accordance with the schedule approved by DEQ on October 10, 2005 for the unauthorized wetland impacts at Hawk's Landing. Said restoration plan is incorporated by reference in and is an enforceable part of this Order.