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

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CENTERPOINTE CROSSING, LLC
FOR
CENTERPOINTE CROSSING SUBDIVISION, CHESTERFIELD VIRGINIA
Permit No. WP4-12-1632

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, Centerpointe Crossing, LLC, regarding Centerpointe Crossing Subdivision, Chesterfield, 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. "Centerpointe" means Centerpointe Crossing, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Centerpointe is a "person" within the meaning of Va. Code § 62.1-44.3.

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, as described in Va. Code § 10.1-1185.

5. "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.

6. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.

7. "E&S" means erosion and sedimentation.

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 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.

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

12. "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.

13. "Permit" means general permit WP4-12-1632, issued by DEQ to Centerpointe Crossing, LLC, on December 5, 2012, 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.

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." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

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

17. "Property" or "Parcel" means the tract of land at 14101 Center Pointe Parkway, Centerpointe Crossing Residential Subdivision, Section 1, Chesterfield County, Virginia, recorded in the Chesterfield County Circuit Court Clerk's Office on October 1, 2013 in Deed Book 10398 page 0935, owned and developed by Centerpointe Crossing, LLC.

18. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*

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 62.1-44.15:23) 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. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.

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

23. "SWMP" means storm water management pond.

24. "USACE" means the United States Army Corps of Engineers.

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

26. "VAC" means the Virginia Administrative Code.

27. "VWP" means Virginia Water Protection.

28. "VWPP" 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.

29. "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. Centerpointe is developing the Property in Chesterfield County, Virginia.

2. On December 5, 2012, DEQ issued the Permit to Centerpointe for wetland impacts associated with the development of Centerpointe Crossing Section 1. The Permit expires on December 4, 2019.

3. On July 12, 2013, DEQ staff conducted an inspection at the Property and a file review. DEQ staff inspected the Property for compliance with the requirements of the State Water Control Law, the Regulations and compliance with the Permit. The DEQ inspector observed the following:

   a) Erosion and sediment controls downstream of authorized Impact Area two and at another area, approximately 900 feet north, failed and allowed sediment, a pollutant, to escape containment and deposit into State waters. The sediment caused unauthorized wetland impacts in these two areas totaling 0.07 acre.

      VWP Permit WP4-12-1632 Part I.C.5 states, "[e]rosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 . . .. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed."

      §62.1-44.15:20 (A) states, "[e]xcept 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 functions; b. Filling or dumping; c. Permanent flooding 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.

9 VAC 25-210-50 (A) states, "[e]xcept in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, 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 the 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 to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

b) There was no flagging of the non-impacted surface waters within 50 feet of any of the permitted activities on the Property. Lack of flagging resulted in unpermitted impacts by clearing and grubbing adjacent to impact area one and impact area two. Unpermitted impacts totaled 0 .008 acres of forested wetland and 44 linear feet of stream channel at impact area one and 35 linear feet of stream channel at impact area two.

VWP Permit WP4-12-1632 Part I. C.10 states, "[a]ll nonimpacted surface waters and compensatory mitigation areas within 50 feet of permitted activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters."

§62.1-44.15:20 (A) states, "[e]xcept 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 functions; b. Filling or dumping; c. Permanent flooding 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."

9 VAC 25-210-50 (A) states, "[e]xcept in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, 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 the 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 to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

4. On August 16, 2013, DEQ issued NOV No. 13-08-PRO-702 to Centerpointe for the violations described in paragraph C(3) above.

5. On August 27, 2013, DEQ staff met with representatives of Centerpointe to discuss the violations.

6. On October 18, 2013, DEQ staff conducted a site visit at the Property and confirmed that Centerpointe is now in compliance with the Permit

7. Based on the results of the site inspections, review of the Permit file, and the August 27, 2013, meeting, the Board concludes that Centerpointe has violated the Permit conditions listed above, Va. Code § 62.1-44.15:20(A) and 9 VAC 25-210-50(A) as described above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Centerpointe and Centerpointe agrees to:

1. Pay a civil charge of $19,337.44 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
April 1, 2014	$2,417.18 or balance
July 1, 2014	$2,417.18 or balance
October 1, 2014	$2,417.18 or balance
January 1, 2015	$2,417.18 or balance
April1, 2015	$2,417.18 or balance
July 1, 2015	$2,417.18 or balance
October 1, 2015	$2,417.18 or balance
January 1, 2016	$2,417.18 or balance

2. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by

Centerpointe. Within 15 days of receipt of such letter, Centerpointe shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

3. 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

4. Centerpointe 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Centerpointe for good cause shown by Centerpointe, 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, Centerpointe admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Centerpointe 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. Centerpointe 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 Centerpointe 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. Centerpointe 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. Centerpointe shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Centerpointe 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 Centerpointe. Nevertheless, Centerpointe 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 Centerpointe has completed all of the requirements of the Order;

b. Centerpointe 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 Centerpointe.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Centerpointe 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 Centerpointe 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. Any documents to be submitted pursuant to this Order shall be submitted by Centerpointe or an authorized representative of Centerpointe.

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, Centerpointe voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2014.

_____
Michael P. Murphy, Regional Director
Department of Environmental Quality

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Centerpointe Crossing, LLC voluntarily agrees to the issuance of this Order.

Date: 1/23/14 By: W Hunter Goodwin III, _____
(Person) (Title)
Centerpointe Crossing, LLC

Commonwealth of Virginia

City/~~County~~ of Virginia

The foregoing document was signed and acknowledged before me this 23rd day of January, 2014, by W. Hunter Goodwin III who is Manager of Centerpointe Crossing, LLC on behalf of the company.

Notary Public

7503754
Registration No.

My commission expires: 4/30/15

Notary seal:

Kathryn J. Siberry
Commonwealth of Virginia
Notary Public
Commission No. 7503754
My Commission Expires 4/30/2015