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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3821
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
HARBOR STATION COMMUNITIES, LLC
FOR THE
HARBOR STATION DEVELOPMENT PROJECT
VWP PERMIT No. 04-0271

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 Harbor Station Communities, LLC, regarding the Harbor Station Development Project, 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. "USACE" means U.S. Army Corps of Engineers.
2. "BMP" means Best Management Practices.
3. "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.
4. "CAP" means corrective action plan.
5. "Compensation" or "compensatory mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

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7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

8. "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.

9. "E&S" means Erosion and Sediment.

10. "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.

11. "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.

12. "Harbor Station" or "Permittee" means Harbor Station Communities, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Harbor Station Communities, LLC is a "person" within the meaning of Va. Code § 62.1-44.3.

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

14. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

15. "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.

16. "Permit" or "Virginia Water Protection Permit" means, VWP Individual Permit 04-0271 issued on February 16, 2005, and modified on June 8, 2006, July 23, 2007, August 7, 2008, December 4, 2008, September 16, 2012, October 7, 2010, and February 29, 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.

17. "PFO" means palustrine forested wetlands.

18. "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.

19. "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

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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.

20. "Project Site" or "Property" means the Harbor Station Development Project owned by Harbor Station Communities, LLC (Permittee) consists of the construction of a mixed-use development consisting of a golf course, residential units, elementary schools, a fire/rescue station and associated infrastructure and a water withdrawal from one intake structure located in Powell's Creek to provide supplemental irrigation for the golf course, on an approximately 1,800-acre parcel. The project is located within the eastern portion of the Cherry Hill Peninsula east of U.S. Route 1 (Jefferson Davis Highway) in Dumfries, Virginia (Prince William County).

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

22. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

23. "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.

24. "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 62.1-44.14:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.

25. "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.

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

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

28. "VAC" means the Virginia Administrative Code.

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. Harbor Station owns the Property in Dumfries, Virginia.

2. The Property was originally owned by and permitted to Lee Carolina, LLC (Lee Carolina). Harbor Station acquired the Property and the Permit was later transferred on February 29, 2012.

3. The Permit currently issued to Harbor Station authorized the total impact of 11.10 acres of surface waters, consisting of 7.48 acres of permanent impacts, 0.07 acre of conversion impacts and 3.55 acres of temporary impacts.

4. On July 5, 2013, Wetland Studies and Solutions, Inc., on behalf of the Permittee, notified DEQ of sediment releases discovered during a monthly E&S control audit conducted on June 27, 2013.

5. In response to the July 5, 2013 notification, DEQ staff conducted a compliance site visit on July 18, 2013.

6. Based on a review of DEQ files and observations made during the site visit conducted July 18, 2013, DEQ determined that there had been a discharge of sediment, a pollutant, into state waters, specifically upstream of Impact Areas Nos. 2, 9, and 12 and located downstream of Impact Area No. 4. In addition to the sediment violations, DEQ observed the unauthorized discharge of fill material, a pollutant, to a perennial stream channel and PFO resulting in significant alteration and degradation of existing wetland acreage and functions.

7. Part I.A.5 of the Permit states that "[a]ny additional impacts to surface waters, including wetlands, or any change to the type of wetland impacts, shall be subject to individual permit review or modification of this permit, and compensation may be required."

8. 9 VAC 25-210-50 A states that "[e]xcept in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical or biological properties of surface waters, excavate in wetlands 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)

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new activities that cause significant alteration or degradation of existing wetland acreage or functions."

9. Va. Code § 62.1-44.15:20.A states that "[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."

10. As a result of the observations made during the site visit and file review, on August 23, 2013, DEQ issued NOV No. W2013-08-N-0006 for the violations of the Permit Part I.A.5, 9 VAC 25-210-50 A, and Va. Code § 62.1-44.15:20.A.

11. On September 23, 2013, Department staff met with representatives of Harbor Station to discuss the violations. At the meeting, Harbor Station stated that the sediment releases and resulting impacts were caused by the site contractor transitioning the site between Phase 1 and Phase 2 E&S controls. During this time period the site experienced significant rain events which overwhelmed the sediment basins and other E&S controls, and caused the discharge of sediment within the four different preservation or stream and wetland areas on-site. In addition, Harbor Station stated that prior to buying the property a BMP facility within the northwestern portion of the project area was created in order to comply with state and county stormwater management regulations. This BMP facility was created by installing a riser structure adjacent to Impact Area No. 3 adjacent to a road embankment. When the property went into receivership, the existing riser became clogged and backflooded a few hundred feet. Harbor Station has since unclogged the riser structure, yet permanent impacts caused by the backflooding had occurred. The BMP facility remains a county requirement and Harbor Station has proposed to keep the pond and replace the existing riser with a weir wall designed to hold back water in a storm event.

12. Based on documentation submitted by Wetland Studies and Solutions, Inc., the total unauthorized impacts include 395 linear feet of perennial stream channel 0.46 acre of PFO associated with the BMP and 730 linear feet of perennial stream channel and 0.09 acre of PFO associated with the sediment releases associated with improper E&S controls.

13. On September 27, 2013, representatives of Harbor Station submitted a CAP detailing a schedule for the restoration of state waters at the sediment release areas.

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14. On October 18, 2013, with revisions dated November 26, 2013 December 31, 2013, and March 21, 2014, Wetland Studies and Solutions, Inc., on behalf of the Permittee submitted a compensatory mitigation proposal regarding the BMP impacts.

15. On October 28, 2013, Wetland Studies and Solutions, Inc., on behalf of the Permittee, submitted confirmation of the purchase of 0.96 wetland credits from the Cedar Run Wetlands, L.C. mitigation bank as compensation for 0.46 acre of palustrine forested wetlands associated with the stormwater BMP Facility.

16. On November 5, 2013, DEQ inspected the Property to assess the progress of the restoration. As a result of the inspection and subsequent documentation provided to DEQ by Harbor Station on November 12, 2013, Harbor Station demonstrated that the restoration activities had been completed.

17. Based on the results of the July 18, 2013 site visit, the September 23, 2013 meeting, and the documentation submitted by representatives of Harbor Station, the Board concludes that Harbor Station has violated Permit Part I.A.5, 9 VAC 25-210-50.A, and Va. Code § 62.1-44.15:20.A, as described in paragraphs C(4) through C(9), above.

18. In order for Harbor Station to complete its return to compliance, DEQ staff and representatives of Harbor Station have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

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

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $25,920.00 within 30 days of the effective date of the Order in settlement of the violations cited in 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

Harbor Station 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

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Department of Law, Harbor Station shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Harbor Station for good cause shown by Harbor Station, 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 and in NOV No. W2013- 08-N-0006, dated August 23, 2013. 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, Harbor Station admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Harbor Station 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. Harbor Station 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 Harbor Station 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. Harbor Station 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. Harbor Station shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Harbor Station shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are

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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 Harbor Station. Nevertheless, Harbor Station 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 Harbor Station has completed all of the requirements of the Order;

    b. Harbor Station 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 Harbor Station.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Harbor Station 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 Harbor Station 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.

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13. The undersigned representative of Harbor Station certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Harbor Station to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Harbor Station.

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, Harbor Station voluntarily agrees to the issuance of this Order.

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

_____
Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

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Harbor Station Communities, LLC voluntarily agrees to the issuance of this Order.

Developer:

Harbor Station Communities LLC,
a Delaware limited liability company

By: Harbor Station Venture LLC
Its: Sole Member

By: HS Land Holdings LLC
Its: Manager

By: _____
Bruce Cook
General Counsel and Secretary

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of _____, 2014, by Bruce Cook who is the General Counsel and Secretary of Harbor Station Communities, LLC, on behalf of the company.

_____
Notary Public

_____
Registration No.

My commission expires: _____

Notary seal:

SEE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California
County of **Orange**

On **June 17** (Date), 2014 before me, **Elizabeth Menicucci, Notary Public** (Here Insert Name and Title of the Officer)
personally appeared ***** Bruce Cook ***** (Name(s) of Signer(s))

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who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Signature of Notary Public)

ELIZABETH MENICUCCI
Commission # 1968677
Notary Public - California
Orange County
My Comm. Expires Feb 4, 2016

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Storm Water Control Board Enforcement Action

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____	Signer's Name: _____
☐ Individual	☐ Individual
☐ Corporate Officer - Title(s): _____	☐ Corporate Officer - Title(s): _____
☐ Partner - ☐ Limited ☐ General	☐ Partner - ☐ Limited ☐ General
☐ Attorney in Fact	☐ Attorney in Fact
☐ Trustee	☐ Trustee
☐ Guardian or Conservator	☐ Guardian or Conservator
☐ Other: _____	☐ Other: _____
Signer is Representing: _____	Signer is Representing: _____
RIGHT THUMBPRINT OF SIGNER Top of thumb here	RIGHT THUMBPRINT OF SIGNER Top of thumb here

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APPENDIX A
SCHEDULE OF COMPLIANCE

Harbor Station shall:

1. **Corrective Action:**

   Within 30 days of the execution of this Order, submit proof of recordation of preservation areas sufficient to provide 600 compensation credits for the discharge of fill material to 395 linear feet of stream channel. All documents shall be submitted in accordance with the compensation mitigation plan submitted on October 18, 2013, with revisions dated November 26, 2013, December 31, 2013, and March 21, 2014, and approved by DEQ on January 10, 2014 and May 12, 2014.

2. **Submissions:**

   Unless otherwise specified in this Order, Harbor Station shall submit all requirements of Appendix A of this Order to:

   Enforcement
   Virginia Department of Environmental Quality
   Northern Regional Office
   13901 Crown Court
   Woodbridge, VA 22193