Piedmont Regional Office
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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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Douglas W. Domenech
Secretary of Natural Resources

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Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
JERUSALEM BAPTIST CHURCH, TRUSTEES
FOR
UNPERMITTED FILLING OF WETLANDS AT 16210 SHORTCUT ROAD, DOSWELL, VIRGINIA

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 Jerusalem Baptist Church, Trustees, regarding unpermitted filling of wetlands at 16210 Shortcut Road, Doswell, Virginia, for the purpose of resolving certain violations of State Water Control Law and the applicable 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. "Church" means Jerusalem Baptist Church and its trustees a Virginia non-profit organization and its trustees, members, affiliates, partners, and subsidiaries. The Church 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. "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 19.34 acre tract of land next to Jerusalem Baptist Church at 16210 Shortcut Road, Doswell Virginia, Deed Book 2899 page 137, which contains 13.71 acres of wetlands and is owned by Jerusalem Baptist Church, Trustees.

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. The Church owns the Property in Hanover County, Virginia.

2. In late 2009 and early 2010, the Church logged the Property in order to generate funding to finance a proposed low-income housing development on the Property. The Church subsequently stumped and graded the Property to remedy the unsightly condition left by the logging work and to prepare the Property for potential development of the low-income housing project.

3. In September of 2011, representatives of Hanover County visited the Property and issued a "stop work order" due to concerns about erosion and sediment control practices, as the Church did not have an approved erosion and sediment control plan or land disturbance permit.

4. The Church immediately stopped all work on the Property.

5. On October 7, 2011, DEQ staff received notification that the Church had logged, stumped and graded the Property and may have impacted forested wetlands and streams on the Property.

6. On October 27, 2011, DEQ staff inspected the Property and observed that the Church had logged, stumped, graded, filled and made channels on the Property and no vegetation remained. DEQ staff observed that the Property contained wetlands that were impacted by the Church's actions. DEQ staff also observed inadequate erosion control devices. The Church did not have a permit for these activities.

7. 9 VAC 25-210-50(A) of the VWP Permit Regulations 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.

8. Va. Code § 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. On January 23, 2012, the USACE made a preliminary determination of the wetlands impacted on the Property. The USACE estimated that 15 acres of forested wetlands, including jurisdictional waters of the U.S. had been degraded.

10. On January 27, 2012, the Church retained a consultant to assist in responding to and addressing the violations.

11. On February 8, 2012, DEQ staff met with representatives of the USACE, Hanover County and the Church to discuss the unpermitted impacts on the Property.

12. On February 13, 2012, DEQ issued NOV No.12-02-PRO-700 for unpermitted impacts to wetlands and streams, Va. Code § 62.1-44.15:20 (A) and 9 VAC 25-210-50(A).

13. In February of 2012, the Church's consultant completed an inspection of the Property and determined that 13.71 acres of palustrine forested wetlands had been impacted and that no streams were directly impacted. The consultant submitted a letter detailing its findings to the USACE and DEQ on March 1, 2012. The USACE and DEQ subsequently accepted the consultant's determination.

14. On March 5, 2012, DEQ staff met with the Church to discuss the NOV.

15. On March 16, 2012, DEQ staff met at the Property with the Church's consultant to determine the content of the restoration plan for the wetlands on the Property. DEQ staff determined that there were no direct impacts to streams.

16. On May 9, 2012, The Church submitted an Ability to Pay ("ATP") application to the DEQ Office of Financial Assurance.

17. On May 23, 2012, the DEQ Office of Financial Assurance completed its review of the financial information submitted by the Church, and determined that the Church has limited financial resources and cannot pay a civil penalty, however, the money the Church obtained from the logging of the Property could be used towards injunctive relief.

18. On July 23, 2012, the Church submitted a wetland restoration plan for the Property for DEQ review and approval.

19. On November 2, 2012, DEQ staff met with the Church's consultant on the Property to review the wetland restoration plan. During the meeting, some natural regrowth of wetland vegetation was observed.

20. On January 8, 2013, DEQ approved the wetland restoration plan for the Property.

21. Based on the results of the site inspections and meetings with the Church, the Board concludes that the Church has violated Va. Code § 62.1-44.15:20(A) and 9 VAC 25-210-50(A) as described above.

22. In order for the Church to complete its return to compliance, DEQ staff and the Church 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 The Church and The Church agrees to:

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

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Church for good cause shown by the Church, 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 Church admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.

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

b. The Church 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 Church.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Church 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 Church 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 Church 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 Church to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of the Church

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, the Church voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2013.

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

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Trustees, The ~~Church~~ Jerusalem Baptist Church voluntarily agree to the issuance of this Order.

Date: July 31, 2013 By: _____, Chairman
(Person) (Title)
Jerusalem Baptist Church, Trustees

Commonwealth of Virginia

City/~~County~~ of Richmond

The foregoing document was signed and acknowledged before me this 31st day of July, 2013, by William A. Thompson who is Trustee/Chairman of the Jerusalem Baptist Church, Trustees, on behalf of the Jerusalem Baptist Church, Trustees.

Shirley Lindley Fox
Notary Public

224087
Registration No.

My commission expires: 10-31-2015

Notary seal:

SHIRLEY LINDLEY FOX
NOTARY PUBLIC
REG # 224087
MY COMMISSION EXPIRES
10/31/2015
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

1. The Church shall implement the wetland restoration plan ("Restoration Plan") entitled "Wetland Restoration Plans, Jerusalem Baptist Church" with a revised date of 1/7/13. Any changes to the approved Restoration Plan shall not be made or implemented without written advance notice to and approval by DEQ.

2. The Church shall submit to DEQ for approval, within 30 days of executing this Order, a schedule for completion of the Restoration Plan. If after submittal and approval of the schedule for completion of the Restoration Plan, the Church believes additional time is reasonably necessary to complete the Restoration Plan, the Church may make a written request for additional time to complete the Restoration Plan, and if DEQ approves such request, the approval shall be incorporated into this order pursuant to paragraph E (12).

3. The Church shall notify DEQ in writing at least 10 days prior to the date that work under the Restoration Plan is to begin.

4. The Church shall monitor the restored wetlands and/or swale areas in accordance with the wetland monitoring plan contained in the Restoration Plan. Monitoring reports shall be prepared in accordance with the approved Restoration Plan and shall be submitted no later than December 31st of each year.

    a. If the restored wetlands and/or swale areas fail to meet the success criteria specified in the approved monitoring plan contained in the Restoration Plan, as determined by DEQ or the Church, at any time during the monitoring period, or if visual observations conclude that the Property is not progressing towards the overall restoration goals, the reasons for this failure shall be identified by the Church. In addition, an alternative Restoration Plan and associated monitoring plan shall be submitted to DEQ for review and approval with that year's monitoring report or within 90 days of the determination that success criteria are not being met, whichever occurs first. The DEQ approved alternative Restoration Plan and associated monitoring plan shall be implemented by the Church in accordance with the approved schedule.

    b. If the restored wetlands and/or swale areas fail to meet all success criteria by the end of the last monitoring year and the Church's or DEQ's analysis indicates that corrective action cannot sufficiently address the reasons for such failure, the Church shall submit to DEQ for review and approval within 90 days of such determination, an alternate mitigation plan and schedule for the unsuccessfully restored wetlands and/or swale areas. The proposed mitigation plan shall conform

to the applicable provisions of Va. Code § 62.1-44.15:21 and 9 VAC 25-210-116 and shall be implemented upon DEQ's approval. If the purchase of mitigation bank credits or contribution to an in-lieu fee fund is proposed, the proof of purchase or contribution shall be submitted to DEQ within 60 days of DEQ's approval of the alternate mitigation plan approval.

5. No later than 30 days after the completion of restoration site construction and planting, the Church shall record a deed restriction with the Clerk of the Circuit Court of Hanover County, on the Property, which is in Hanover County, Virginia. Such deed restriction shall follow the most recent USACE "Deed Restriction Template" and be approved by DEQ prior to recordation. The deed restriction shall be to preserve 12.79 acres of wetlands on the Property, and ensure that no activity will be performed on the deed restricted portion of the Property with the exception of maintenance or corrective action measures authorized by DEQ. The restrictions shall apply to ditching, land clearing, or the discharge of dredge or fill material. The Church shall send a copy of the recorded deed restriction, including receipt from the Clerk of Court to the contact listed below within 10 days of recordation. To the extent a conflict arises between the deed restriction and this paragraph of the Order, the deed restriction shall control.

6. No later than 30 days after the completion of restoration site construction and planting, the Church shall post permanent visible signs, made of metal or plastic, stating 'protected wetland areas' which shall be conspicuously placed and maintained along the wetland preservation boundary and adjacent wetlands boundaries on the Property no more than 100 feet apart.

7. Unless otherwise specified in this Order, the Church shall submit all requirements of Appendix A of this Order to:

Gina Pisoni
Enforcement Specialist
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5156
804-527-5106 (fax)
Gina.Pisoni@deq.virginia.gov