COMMONWEALTH of VIRGINIA

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

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MADERA FARM, LLC
FOR
MADERA FARM

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 Madera Farm, LLC, regarding the Madera Farm, 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

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

4. "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.

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

6. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.

7. "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.

8. "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.

9. "Madera Farm" means Madera Farm, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Madera Farm, LLC is a "person" within the meaning of Va. Code § 62.1-44.3. Its Prince William County business license number is 13L2636Z.

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 tract of land south of Nokesville Road and to the west of Fitzwater Drive in Prince William County, Virginia, owned by Madera Farm.

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

17. "Regulations" means the Virginia Water Protection 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. "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. Madera Farm has owned the Property in Prince William County, Virginia since 2011. The Property, a 125.84 acre parcel, is zoned "A1 Agricultural." Approximately 40-50 acres of the Property is set aside as a Resource Protection Area.

2. Madera Farm stated that it purchased the Property for agricultural purposes including growing crops, pasture for livestock, feeding livestock, and a nursery operation.

3. Madera Farm stated that it cleared approximately 40-50 acres of timber to provide for crop fields, pasture, livestock housing, and a nursery operation. In addition, Madera Farm states that it intends to construct a farm pond and a farm road around the perimeter of the agricultural operation.

4. Prior to any land disturbance activity on the Property, Madera Farm sought approval for its plans from multiple government agencies including:

    a. the Watershed Management Division of the Prince William County Department of Public Works, which issued a land disturbance exemption on February 10, 2012;

    b. the Prince William County Soil & Conservation District, which approved Madera Farm's Soil & Conservation Plan for the Property on February 23, 2012.

5. On March 22, 2013, DEQ received a report of potential unauthorized filling of surface waters at the Property.

6. On May 1, 2013, Department staff inspected the Property for compliance with the requirements of the State Water Control Law and the Regulations. DEQ observed wetland and stream areas that had been cleared and graded, resulting in the dredging and filling of 6.75 acres of palustrine forested wetlands (PFO) and 296 linear feet (lf) of stream.

7. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit dredging or filling of surface waters without a Permit issued by the Director. Madera Farm does not have a Permit for the above activities

8. On September 24, 2013, DEQ issued NOV No. W2013-08-N-001 for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.

9. On October 9, 2013, and December 19, 2013, Department staff met with representatives of Madera Farm to discuss the violations. Impacts to 5.307 acres of PFO and 15 lf of stream resulted from the creation of a farm pond and are excluded from permitting requirements pursuant to 9 VAC 25-210-60.10.

10. On December 11, 2013, Madera submitted documentation including a jurisdictional delineation approved by the USACE detailing unauthorized impacts to surface areas in the amount of 1.44 acres of PFO and 281 lf of stream.

11. Based on the results of the May 1, 2013, inspection, the October 9, 2013, and December 19, 2013 meetings, and the documentation submitted on December 11, 2013, the Board concludes that Madera Farm has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50, as described in paragraphs C(2) through C(3), above.

12. In order for Madera Farm to return to compliance, DEQ staff and representatives of Madera Farm 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 Madera Farm, and Madera Farm agrees to:

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

2. Pay a civil charge of $22,970.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
90 days after effective date of the Order	$7656.66 or balance
120 days after effective date of the Order	$7656.67 or balance
150 days after effective date of the Order	$7656.67 or balance

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

4. All payments 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

Madera Farm 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, Madera Farm 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 Madera Farm for good cause shown by Madera Farm, 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-001 dated September 24, 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, Madera Farm admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

b. Madera Farm 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 Madera Farm.

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

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, Madera Farm voluntarily agrees to the issuance of this Order.

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

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

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Madera Farm, LLC voluntarily agrees to the issuance of this Order.

Date: 4/7/14 By: _____, Member
(Person) (Title)
Madera Farm, LLC

Commonwealth of Virginia
City/County of Fauquier

The foregoing document was signed and acknowledged before me this 5 day of April, 2014, by _____ who is _____ of Madera Farm, LLC, on behalf of the company.

Valerie Lynn Moore
Notary Public

281370
Registration No.

My commission expires: November 30, 2017

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Madera Farm shall compensate for 281 lf of unauthorized stream impacts through the restoration of 570.02 linear feet of stream channel and compensate for 1.44 acres of PFO wetlands through the restoration/creation of 1.44 acres of PFO in accordance with the Final Stream and Wetland Mitigation Plan (Plan) and schedule contained therein submitted January 10, 2014, with revisions on January 27, 2014, February 17, 2014, February 21, 2014, and approved by DEQ on February 21, 2014. Any changes to the approved Final Plan or schedule shall not be initiated without advance notice to and approval by DEQ. Madera Farm shall complete the Plan in accordance with its terms.

    a. If the performance criteria specified in the Final Plan are not achieved at the end of the applicable monitoring period, then Madera Farm shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, Madera Farm shall submit to DEQ for review and approval an alternative Corrective Action Plan (CAP) within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by Madera Farm in accordance with the schedule set forth in the alternative CAP.

    b. If the performance criteria specified in the Final Plan or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then Madera Farm shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund sufficient to compensate for impacts to 1.44 acres of PFO and 281 linear feet of stream channel to address any remaining corrective action required in the Final Plan or CAP or, as applicable, any previously submitted alternate CAP. Madera Farm shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. Madera Farm shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.

2. Unless otherwise specified in this Order, Madera Farm shall submit all requirements of Appendix A of this Order to:

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