COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 Fax (757) 518-2103
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

VA Timberline, LLC, d/b/a Virginia Timberline

VWP General Permit No. WP4
VWP General Permit Authorization No. WP4-04-2205

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 Virginia Timberline, L.L.C., 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 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.

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. "TRO" means the Tidewater Regional Office of DEQ, located in the City of Virginia Beach, Virginia.

7. "Permit" means Virginia Water Protection ("VWP") General Permit No.WP4 which became effective July 21, 2005 and which expires July 20, 2010. Virginia Timberline was authorized, as evidenced by VWP Authorization No.WP4-04-2205, issued on July 21, 2005 (insert date of authorization) to permanently impact certain wetlands areas as described in Section C below in accordance with the terms and conditions of the Permit.

8. "Virginia Timberline" means VA Timberline, LLC doing business as Virginia Timberline, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

9. "Property" means the Lawnes Point subdivision located in Isle of Wight County (end of Route 686).

SECTION C: Finding of Facts and Conclusions of Law

1. Virginia Timberline is constructing a residential subdivision called Lawnes Point, containing 155 residential lots, ranging in size from 2-5 acres each, on the approximately 1300-acre site adjacent to Lawnes Creek and the James River. The Property contains both non-tidal and tidal wetlands.

2. On April 29, 2005, prior to issuance of the Permit, DEQ issued a Warning Letter to Virginia Timberline due to inadequate erosion and sediment controls and associated impacts to non-tidal forested wetlands on the Property caused by sediment-laden runoff.

3. Subsequent to the issuance of the Warning Letter, Virginia Timberline applied for and received authorization under the Permit to permanently impact up to 0.66 acres of non-tidal forested wetlands for construction of six road crossings over several tributaries to Lawnes Creek for additional property access.

4. On July 19, 2006, TRO staff inspected the Property and observed at the majority of the non-tidal permitted impact areas, erosion and sediment controls were either not present, were in process of being installed, or were not adequately maintained. Uncontrolled runoff of sediment from construction activities had resulted in the unauthorized fill of non-tidal forested wetlands totaling approximately 0.6 acres. Impacts associated with this fill were not authorized by the Permit, nor was DEQ notified of these additional impacts.

5. Also observed during the July 19, 2006 inspection was that, at a majority of the Permit-authorized impact areas, clear flagging or marking of wetlands for which impacts were not authorized and which were located within 50 feet of land disturbances was not present or properly maintained.

6. Part I.C.5 of the Permit requires that Erosion and Sedimentation controls shall be placed prior to clearing and grading and maintained in good working order to

minimize impacts to state waters, and shall remain in place until the area is stabilized, and shall then be removed. Virginia Timberline violated Part I.C.5 by not installing or adequately maintaining erosion and sedimentation controls at the six permitted impact areas.

7. Part I.C.10 of the Permit requires that all nonimpacted surface waters within 50 feet of permitted activities and within the project or right-of-way limit shall be clearing flagged or marked for the life of the construction activity at that location to preclude any unauthorized disturbances to these surface waters during construction. Virginia Timberline violated Part I.C.10 of the Permit by not flagging or marking non-impacted wetlands within 50 feet of land disturbances.

8. Part I.C.11 of the Permit requires minimization of all construction materials entering surface waters. Virginia Timberline violated Part I.C.11 by allowing a discharge of sediment from the construction site to a wetland.

9. On August 3, 2006, DEQ issued Notice of Violation ("NOV") W2006-08-T-001 to Virginia Timberline, L.L.C. The Notice of Violation advised Virginia Timberline of violations observed on the property and applicable regulatory citations.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it by Va. Code § 62.1-44.15(8a) and (8d), orders Virginia Timberline, and Virginia Timberline voluntarily agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Virginia Timberline, and Virginia Timberline voluntarily agrees, to pay a civil charge of $9,100 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include Virginia Timberline's Federal Identification Number and shall reference that payment 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 1104
Richmond, Virginia 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Virginia Timberline, for good cause shown by Virginia Timberline, 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 warning letter and Notice 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 only, Virginia Timberline admits the jurisdictional allegations in the Order, but does not admit the factual allegations or legal conclusions contained herein.

4. Virginia Timberline 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. Virginia Timberline 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 Virginia Timberline 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. Virginia Timberline 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 act of God, war, strike, or such other occurrence. Virginia Timberline shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Virginia Timberline 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 24 hours of learning of any condition above, which Virginia Timberline 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 Virginia Timberline. Notwithstanding the foregoing, Virginia Timberline 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 terminates the Order in his or its sole discretion upon 30 days written notice to Virginia Timberline. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Virginia Timberline 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, Virginia Timberline voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2007.

_____
Francis L. Daniel

VA Timberline, LLC voluntarily agrees to the issuance of this Order.

By: Alan L Murray
VICE President, American Land Partners, Inc
Manager National Land Partners, LLC,
Manager VA Timberline LLC
Date: 10/1/07

Commonwealth of ~~Virginia~~ Massachusetts
City/County of Berkshire

The foregoing document was signed and acknowledged before me this 1st day of October, 2007, by Alan L. Murray (name), who is V.P. Am Land Partners, Inc, Manager National Land Partners, LLC Manager VA Timberline, LLC (title) of VA Timberline, LLC, on behalf of Virginia Timberline LLC.

Michell K Manners
Notary Public

My commission expires: 7-4-2008.

APPENDIX A

VA Timberline, LLC shall:

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

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

2. Comply with the terms and conditions specified in VWP General Permit No.WP4, which became effective date July 21, 2005 and which expires July 20, 2010.

3. Provide DEQ within 60 days of the effective date of this Order, an approvable plan and schedule to remove all pollutants contained in the unauthorized discharges, prevent future discharges, and provide restoration of the impacted six road crossing non-tidal wetland areas referenced in Section C.6 of this Order. Upon its approval said plan and schedule shall become a requirement of and enforceable under the terms of this Order.

4. Purchase within 30 days of the effective date of this Order, 0.3 acres of mitigation bank credits pursuant to VA Code 62.1-44.15:5.E to provide 0.5:1 functional loss compensation for the unpermitted impacts to the 0.6 acres non-tidal wetlands from a DEQ-approved non-tidal wetland bank serving the project area. Compensation required by this Order shall meet or exceed the permit compensation requirements established in Va. Code 62.1-44.15:5 and the Regulation. Provide documentation of this purchase to DEQ within 30 days of the purchase of the 0.3 acres of mitigation bank credits.