COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Valley Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BELVEDERE STATION LAND TRUST
FOR
BELVEDERE DEVELOPMENT
Permit No. WP4-06-2581

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 Belvedere Station Land Trust, regarding the Belvedere Development, for the purpose of resolving certain violations of State Water Control Law and the applicable permit 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. "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. "Compensation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.

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. "BSLT" means Belvedere Station Land Trust, a Virginia Land Trust authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. BSLT is a "person" within the meaning of Va. Code § 62.1-44.3.

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

7. "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.

8. "Permit" means Virginia Water Protection General Permit No. WP4-06-2581, which was issued to Belvedere Station Land Trust on March 28, 2007 and expires March 27, 2014.

9. "Property" or "Parcel" means the tract of land adjacent to the South Fork Rivanna River, bordered to the east and south by the Dunlora Farm and Subdivision, and to the west by Rio Road, northeast of Charlottesville in Albemarle County, Virginia, owned by BSLT.

10. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

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

12. "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.

13. "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.

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

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

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

17. "VAC" means the Virginia Administrative Code.

18. "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.

19. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. BSLT owns a 206.68 acre mixed commercial and housing development in Albemarle County, Virginia ("Property").

2. On March 28, 2007, DEQ issued Virginia Water Protection Permit No. WP4-06-2581 to BSLT for the Property, authorizing permanent impacts to approximately 763 linear feet of stream channel, 0.01 acres of palustrine scrub shrub wetland, 0.02 acre of palustrine forested wetlands, and temporary impacts to 0.62 acres of open water, all associated with unnamed tributaries to the South Fork Rivanna River, each of which are considered State waters.

3. On April 3, 2009, DEQ issued Warning Letter No. W2009-04-V-1020 to BSLT for failure to submit the semi-annual Construction Monitoring Report due October 10, 2008 and failure to have the protective mechanism for the compensation sites recorded and in place by August 21, 2008.

4. The VWP Permit No. WP4-06-2581, Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 and 9 VAC 25-210-90 requires permittees to comply with all conditions of the VWP permit.

5. On June 1, 2009, DEQ issued Warning Letter No. W2009-06-V-2581 to BSLT for failure to submit the semi-annual Construction Monitoring Report due October 10, 2008, failure to have the protective mechanism for the compensation sites recorded and in place by August 21, 2008, and failure to submit the semi-annual Construction Monitoring Report due April 10, 2009.

6. On July 29, 2009, DEQ issued NOV No. W2009-07-V-0006 to BSLT for failure to submit the semi-annual Construction Monitoring Report due October 10, 2008, failure to have the protective mechanism for the compensation sites recorded and in place by August 21, 2008, and failure to submit the semi-annual Construction Monitoring Report due April 10, 2009.

7. On October 27, 2009, Department staff met with representatives of BSLT to discuss the violations and corrective actions necessary for BSLT to return to compliance. During the October 27, 2009 meeting, DEQ requested the BSLT submit a plan and schedule of corrective actions for returning to compliance.

8. Based on the October 27, 2009 meeting, the file review and the documentation submitted on November 9, 2009, the Board concludes that BSLT has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 and 9 VAC 25-210-90 and the Permit as described in paragraph (C3), (C5) and (C6) above.

9. On November 9, 2009, BSLT submitted a written plan and schedule of corrective actions for incorporation into a proposed Consent Order to record the protective mechanism for the compensation sites and to complete the Permit required compensation. Although BSLT started the wetland compensation through a contribution to the James River Mitigation Land Bank as required by the Permit, it did not begin the on-site stream compensation.

10. In order for BSLT to return to compliance, DEQ staff and representatives of BSLT have agreed to the civil charge and conditions 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 BSLT, and BSLT agrees to:

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

2. Pay a civil charge of **$7,911** 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

BSLT shall include its Federal Employer Identification Number (FEIN) **(03-0447132)** 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 BSLT for good cause shown by BSLT, 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, BSLT admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. BSLT 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. BSLT 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 BSLT 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. BSLT 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 occurrence. BSLT shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BSLT 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 BSLT 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 BSLT. Nevertheless, BSLT 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. BSLT 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

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to BSLT.

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

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, Belvedere Station Land Trust voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____
Amy T. Owens, Valley Regional Director
Department of Environmental Quality

Belvedere Station Land Trust voluntarily agrees to the issuance of this Order.

Date: 4/01/2010 By: _____, Trustee
(Person) (Title)
Belvedere Station Land Trust

Commonwealth of Virginia
~~City~~/County of Albemarle

The foregoing document was signed and acknowledged before me this 1st day of April, 2010, by Robert M. Hauser who is Trustee of Belvedere Station Land Trust on behalf of the company.

Louis J. Lopez III
Commonwealth of Virginia
Notary Public
Commission No. 7220040
My Commission Expires 07/31/2012

_____
Notary Public

7220040
Registration No.

My commission expires: 7/31/2012

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **By April 15, 2010,** BSLT shall begin the process necessary to record the protective mechanism for the compensation areas and submit to DEQ for review and approval the language for the protective mechanism. BSLT shall address any comments on the protective mechanism within 30 days of receiving written comments.

2. **By June 1, 2010**, BLST shall complete the planting in the compensation areas as defined in the Permit.

3. **By August 30, 2010**, BSLT shall complete the recording of the protective mechanism for the compensation sites and submit the recorded protective mechanism to DEQ.

4. BLST shall complete the work in the enhancement area in accordance with the Permit's requirements, except as specified in this Order.

5. Unless otherwise specified in this Order, BSLT shall submit all requirements of Appendix A of this Order to:

Eric Millard
Environmental Specialist II
VA DEQ –Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7813 Phone
(540) 574-7878 Fax
Eric.millard@deq.virginia.gov

and copy

Steve Hetrick
Enforcement Specialist Sr.
VA DEQ –Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7833 Phone
(540) 574-7878 Fax
Steven.hetrick@deq.virginia.gov