RECEIVED
OCT 13 2009
PRO

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 Fax (804) 527-5106
www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION AMENDMENT TO SPECIAL ORDER BY CONSENT ISSUED TO HHHunt CORPORATION

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 HHHunt Corporation, regarding the Rutland residential development, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations

SECTION B: Basis for Amendment

1. On December 11, 2008, DEQ issued HHHunt a Consent Order, which resolved certain violation of State Water Control Law, its supporting Regulations, and noncompliance with Virginia Water Protection Permit No. 05-1612. The December 2008 Consent Order required payment of a civil charge in the amount of $55,000, completion of the stream restoration required by the Permit, and securing easements for stream buffer preservation.

2. In April 2009, HHHunt contacted the Department and requested a revised schedule for the stream restoration required by the December 2008 Consent Order.

3. DEQ staff and representatives of HHHunt agreed to a revised schedule of compliance on the condition that HHHunt provided an increase in the irrevocable standby letter of credit from 50% of the total remaining project cost to 75% of the total remaining project. As a result the standby letter of credit increased from $204,571 to $346,976 in order to ensure completion of Appendix A.

4. The revised schedule of compliance is incorporated as Appendix A of this Amendment Order.

SECTION C: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15(8a), the Board orders HHHunt Corporation, and HHHunt Corporation agrees to perform the actions described in Appendix A of this Amendment, which supersedes Appendix A of the December 11, 2008 Consent Order. Both the Board and HHHunt understand and agree that this Amendment does not alter, modify, or amend any other provision of the December 11, 2008 Order and that the unmodified provisions of the December 11, 2008 Order remain in effect by their own terms.

And it is so ORDERED this ____ day of _____, 2009.

_____
Richard F. Weeks, Regional Director
Department of Environmental Quality

HHHunt Corporation voluntarily agrees to the issuance of this Order.

By: _____

Date: 10/9/09

Commonwealth of Virginia
~~City~~/County of Henrico

The foregoing document was signed and acknowledged before me this 9th day of October, 2009, by Daniel T. Schmitt, who is
(name)
Vice President of HHHunt Corporation, on behalf of HHHunt Corporation.
(title)

MARY MITCHELL MARYE
COMMONWEALTH OF VIRGINIA
REGISTRATION NO. 250494
MY COMM. EXPIRES 12.31.2013
NOTARY PUBLIC

Mary Mitchell Marye
Notary Public

My commission expires: 12.31.2013.

APPENDIX A

1. Unless otherwise authorized by this Order, construction or other land disturbance is prohibited in uplands or surface waters (including wetlands) within the limits of Section IV of Rutland until all requirements of this order have been fulfilled.

2. HHHunt shall complete all stream restoration as described below and in the Final Stream Compensatory Mitigation Plan approved by DEQ on July 10, 2008 and the Rutland Off-site Stream Mitigation Update approved by DEQ on March 12, 2009.

3. Stream restoration work on "Tributary 2", including planting, shall be completed **no later than December 31, 2009** in accordance with the Final Stream Compensatory Mitigation Plan (approved by DEQ on July 10, 2008).

4. Stream restoration work on "Tributary 1" and Opossum Creek **shall be completed no later than December 31, 2010**, in accordance with the Final Stream Compensatory Mitigation Plan (approved by DEQ on July 10, 2008), or an alternative plan approved by DEQ. HHHunt shall notify DEQ at least 10 days prior to the date that stream restoration construction commences on those stream segments.

5. Within the Rutland property, HHHunt shall complete approximately 94 linear feet of stream restoration and approximately 0.129 acres of wetland restoration as depicted on the map submitted to DEQ by HHHunt on October 8, 2009 ("October Map"). Restoration work in Areas 1, 2 and 3 on the October Map shall be completed **no later than March 31, 2011**. Restoration work in Area 4 on the October Map shall be completed **no later than March 31, 2015**. HHHunt shall submit a restoration plan to DEQ **no later than December 31, 2009** for Areas 1 through 4 and, upon DEQ approval, shall abide by the plan and schedule therein. HHHunt shall not implement any changes to the approved plan without advance approval by DEQ. If any portion of the restoration work is not completed by the applicable due date, HHHunt shall purchase up to 0.129 wetland credits and 94 feet of stream credits (reduced by such portion of the restoration that has been completed successfully by the applicable date) from an approved mitigation bank in the same or an adjacent hydrologic unit code as the Site, pursuant to Va. Code § 62.1-44.15:23. HHHunt shall provide documentation of any credit purchase in lieu of restoration work in Areas 1, 2, or 3 to DEQ **no later than April 30, 2011**, and documentation of any credit purchase in lieu of restoration work in Area 4 **no later than April 30, 2015**.

6. All protective instrument(s) described in Part I.K.3 of the Permit, the Final Stream Compensatory Mitigation Plan (approved by DEQ on July 10, 2008) and the Rutland Off-site Stream Mitigation Update (approved by DEQ on March 12, 2009) shall be recorded **no later than December 31, 2010.**

7. HHHunt shall obtain an irrevocable standby letter of credit for $204,571 and submit the original letter to the Director **no later than November 1, 2008. No additional impacts**

to surface waters may occur until the Director receives the original letter of credit. The issuing institution shall be a bank or other financial institution that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Commonwealth of Virginia, by a federal agency, or by an agency of another state. The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for restoration. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the issuing institution decides not to extend the letter of credit beyond the current expiration date it shall, at least 120 days before the date, notify both HHHunt and the Director by certified mail of that decision. The 120-day period will begin on the date of receipt by the Director as shown on the signed return receipt. Expiration cannot occur, while an enforcement action is pending. Within 60 days of receipt of notice from the issuing institution that it does not intend to extend the letter of credit, HHHunt shall obtain alternate financial assurance and submit it to the Director.

(a) **Every year, beginning August 1, 2009 until DEQ determines financial assurance is no longer necessary,** HHHunt shall submit an updated cost estimate for all remaining restoration work. Whenever the cost estimate increases such that the letter of credit covers less than 75% of the cost estimate, HHHunt shall, **no later than October 1 of that year**, cause the amount of credit to be increased to an amount at least equal to 75% of the new estimate or obtain other financial assurance approved by DEQ to cover the increase. Whenever the cost estimate decreases, the letter of credit may be reduced to the amount of 75% of the new estimate following written approval by the Director. The issuing institution shall send the notice of an increase or decrease in the amount of the credit to the Director by certified mail **no later than December 1 of that year.**

(b) If the DEQ determines that HHHunt has not met its obligations under the CSO, the Director of DEQ or his designee, shall give written notice to HHHunt, specifying the deficiency. Any notice required hereunder shall be deemed effective if given by registered mail, return receipt requested.

(c) In the event of unsatisfactory completion of the stream restoration required by this Order (as determined by DEQ), or HHHunt's failure to meet the deadline set by this Order for completing the stream restoration, the Director may cash the letter of credit.

(d) HHHunt may cancel the letter of credit only if alternate financial assurance acceptable to the Director is substituted as specified in this section or if HHHunt is released by the Director from the requirements of Appendix A.

(e) The Director shall return the original letter of credit to the issuing institution for termination when:

i. HHHunt substitutes acceptable alternate financial assurance for the restoration work; or

ii. Restoration work is completed in accordance with this Order and the Director notifies HHHunt that it is no longer required to maintain financial assurance for the restoration work.

8. All requirements of Appendix A of this Order shall be submitted to:

Allison C. Dunaway
Enforcement Manager
VA DEQ – PRO
4949-A Cox Road
Glen Allen, VA 23060
Phone: (804) 527-5086
Fax: (804) 527-5106
Email: Allison.Dunaway@deq.virginia.gov