COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
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Preston Bryant
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO HOPSON, LLC

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d) between the State Water Control Board and Hopson, LLC for the purpose of resolving certain alleged violations of environmental law and 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 citizen's 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. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of a 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.

6. "Hopson LLC" means Hopson LLC, owner of the property at the Walnut Creek subdivision, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "Impoundment" means a structure, regardless of its size or intended use, to gather and store surface water that captures the flow of, and is constructed in the channel of, a permanent or intermittent stream.

8. "Pollutant" means any substance, or radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution.

9. "Property" means the Walnut Creek subdivision, which consists of 526.35 acres of land, located south of Route 60, just east of the Cumberland County line in western Powhatan County, Virginia.

10. "Order" means this document, also known as a Consent Special Order.

11. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

12. "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.

13. "Surface water" means all state waters that are not ground water as defined in §62.1-255 of the Code of Virginia.

14. "VWP permit" means an individual or general permit issued by the board under §62.1-44.15:20 of the Code of Virginia that authorizes activities otherwise unlawful under §62.1-44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia's §401 certification.

SECTION C: Findings of Fact and Conclusions of Law

1. On June 11, 2001, Hopson LLC, a person pursuant to 9 VAC 25-210-10, purchased the Property, which is located south of Route 60 in western Powhatan, where the Walnut Creek subdivision is currently under development.

2. In 2001, Hopson LLC initiated construction of an impoundment on an unnamed tributary to Deep Creek, at the Property. This unnamed tributary to Deep Creek is a surface water of the Commonwealth of Virginia. Records and aerial photography indicate that the construction of the impoundment and resultant back flooding of upstream wetlands and streams was completed in the spring of 2002. DEQ never received an application for a VWP permit authorizing these impacts. Neither the United States Army Corps of Engineers (USACE) nor DEQ has issued a permit for these impacts.

3. On June 25, 2007, an associate of Balzer & Associates Inc. (Balzer), a consultant of Hopson LLC, requested a pre-application meeting be held at DEQ's Piedmont Regional Office to discuss applying for a VWP permit for the development of the Walnut Creek subdivision at the Property. Attending the meeting were representatives from the USACE, Balzer, DEQ and Hopson LLC. At the meeting, Hopson LLC reported that a "farm pond" was constructed in 2001. In order to proceed with the VWP permit application process, DEQ requested that all prior and proposed impacts to surface waters and wetlands would need to be provided. Balzer agreed to provide a history of the construction, and what if any permits had been issued at that time for the construction of the impoundment.

4. The impoundment on the Property does not meet the definition of activities exempt from certain agricultural and silvicultural ponds and impoundments as granted by 9 VAC 25-210-60.A.9.

5. On February 8, 2008, the Department issued a Notice of Violation (NOV) to Hopson LLC for the filling and flooding of approximately 4000 linear feet of a stream channel and 3 acres of wetlands during construction of the impoundment.

6. On March 17, 2008, representatives of Hopson LLC and their consultants met with the Department to discuss resolution of the NOV. Hopson LLC claimed that the unauthorized impacts referenced in the NOV were incorrect. DEQ requested that Hopson LLC provide their estimates for the total impacts to wetlands and surface waters from the construction of the impoundment and submit for review and approval a compensatory mitigation plan and schedule to address the impacts.

7. On October 6, 2008, Hopson LLC did submit impact estimates (1.08 acres of wetlands and 3,700 linear feet of streams) as requested and an approvable mitigation plan to address the unauthorized impacts at the Property. DEQ agrees with Hopson's estimate of the stream impacts. For purposes of settlement, DEQ agrees not to contest Hopson's estimate of the wetland impacts.

8. Hopson LLC's actions of filling surface water tributaries of Deep Creek without first obtaining authorization from DEQ are in violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.

9. Hopson LLC has agreed to mitigate for the unauthorized impacts as follows: 1) purchase 1.08 wetland credits from an approved mitigation bank; 2) preservation of 19,585 linear feet of stream with minimum 50' buffers on each side by deed restrictions; 3) preservation of 13.88 acres of wetlands with buffers by deed restriction; and 4) preservation of 3.53 acres of wetlands without buffers or deed restrictions.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Hopson LLC, and Hopson LLC voluntarily agrees to perform the actions described in Appendix A and Appendix B of the Order. In addition, the Board orders Hopson LLC, and Hopson LLC voluntarily agrees to pay a civil charge of **$31,568** 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 cashiers check payable to the "Treasurer of Virginia" and shall be delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Either on a transmittal letter or as a notation on the check, Hopson LLC shall include its Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Hopson LLC for good cause shown by Hopson LLC, 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 NOV (NOV No. 08-01-PRO-701) issued by DEQ on February 8, 2008. 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, Hopson LLC admits the jurisdictional allegations, and agrees not to contest, but does not admit the factual findings, and conclusions of law contained herein.

4. Hopson LLC 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. Hopson LLC 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 Hopson LLC 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. Hopson LLC 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. Hopson LLC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hopson LLC 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 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, 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 Hopson LLC. Notwithstanding the foregoing, Hopson LLC 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 Hopson LLC. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hopson LLC 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, Hopson LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this____day of _____, 2009.

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

Hopson LLC voluntarily agrees to the issuance of this Order.

By: _____

Date: 4/16/09

Commonwealth of Virginia
City/County of CHESTERFIELD

NOTARY PUBLIC
REG. # 116001

The foregoing document was signed and acknowledged before me this 16th day of

April, 2009 by Michael Barr, who is
(Name)

Managing Partner of Hopson LLC.
(Title)

Notary Public

My commission expires: 10/31/12
REG. # 116001

APPENDIX A

Hopson LLC shall:

1. **By June 10, 2009**, purchase the 1.08 acre wetland mitigation credits from an approved wetland mitigation bank (in the same or adjacent hydrologic unit code as the impacts).

2. **By July 10, 2009,** submit to DEQ, documentation that the USACE has debited the required 1.08 credits from an approved mitigation bank.

3. **By July 10, 2009**, submit to DEQ proof of the completion and recordation of the attached DECLARATION OF RESTRICTIONS, Appendix B, for each affected parcel within the Preservation Area. The Preservation Area shall include the preservation of 19,585 linear feet of stream with minimum 50' buffers on each side of the stream and the preservation of 13.88 acres of wetlands with buffers per the August 20, 2008 submittal from Balzer And Associates, Inc.

4. **Pursuant to this Order, submit all documentation as required by Appendix A to:**

Cynthia Akers
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060

APPENDIX B

DECLARATION OF RESTRICTIONS

OF

_____
(Owner)
_____ , VIRGINIA

THIS DECLARATION OF RESTRICTION COVENANTS, is made this _____day of _____, 2009, by _____, Owner.

WHEREAS, (_____) is the owner of the Property more fully described on Exhibit A attached hereto; it being the same property conveyed to _____, by deed from _____, dated _____, and duly recorded in the Clerk's Office of the _____ of _____ in Deed Book ____, at page ____).

WHEREAS, (_____) desires to impose on said Property restrictive covenants expressing (_____) 's intent to preserve _____acres of said property as shown on Exhibit B and as described as _____ (e.g. "wetlands subject to restrictive covenants") in perpetuity in its natural state as detailed below. These covenants are imposed by Owner freely and voluntarily, in order to assure that the aquatic impacts pursuant to permit #_____ shall be minimal.

NOW THEREFORE THIS DECLARATION WITNESSETH: (_____) does hereby declare, covenant and agree, for itself and its successors and assigns, that said Property described as _____ shown on Exhibit B shall be hereafter held, leased, transferred, and sold subject to the following conditions and restrictions which shall run with the land and be binding on all parties and persons claiming under them.

Covenants and Restrictions

The Property described as _____ shown on Exhibit B attached hereto shall be preserved in perpetuity in its natural state, by prohibiting the following activities:

1. Destruction or alteration of the preservation area shown on Exhibit B other than those alterations authorized by the Norfolk District, U.S. Army Corps of Engineers (USACE) and/or the Virginia Department of Environmental Quality (DEQ) under Permit Number _____;

2. Construction, maintenance or placement of any structures or fill including but not limited to buildings, mobile homes, fences, signs other than those which currently exist. *(OPTIONAL*

EXCEPTION: However, boardwalks, wildlife management structures, observation decks, one informative sign, and unpaved foot trails may be placed within the preservation area provided that any such structure permits the natural movement of water and preserves the natural contour of the ground and subject to prior written approval by the USACE and DEQ);

3. Ditching, land clearing or discharge of dredge or fill material, including diking, damming, filling, excavating, grading, plowing, flooding/ponding, draining, mining, drilling, placing of trash and yard debris or removing/adding topsoil, sand, or other materials (except as may be necessary on a case-by-case basis with prior written approval by USACE and DEQ);

4. Permitting livestock to graze, inhabit or otherwise enter the preservation area;

5. Cultivating, harvesting, cutting, logging, planting, and pruning of trees and plants, or using fertilizers and spraying with biocides (except as may be necessary on a case-by-case basis with prior approval by USACE and DEQ);

Amendment

The covenants contained herein shall not hereafter be altered in any respect without the express written approval and consent of the Owner or its successor in interest and the USACE and DEQ. The Owner or its successor may apply to the USACE and DEQ for vacation or modification of this declaration; however, after recording, these restrictive covenants may only be amended or vacated by a recorded document signed by the USACE and DEQ and the Owner or its successor in interest.

Compliance Inspections and Enforcement

The USACE, DEQ, and its authorized agents shall have the right to enter and go upon the Property to inspect the Property and take actions necessary to verify compliance with these restrictive covenants. The restrictive covenants herein shall be enforceable by any proceeding at law or in equity or administrative proceeding by the USACE or DEQ, *[or any owner of a lot within the _____subdivision]*. Failure by any agency (or owner) to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

Separability Provision

The provisions hereof shall be deemed individual and severable and the invalidity or partial invalidity or unenforceability of any one provision or any portion thereof shall not affect the validity or enforceability of any other provision thereof.

Consent of Lender and Trustee (if applicable)

Owner is the maker of a note dated_____, secured by, among other things, a deed of trust dated _____, from Owner to _____, as trustee, recorded in the Clerk's office at Deed Book_____, Page ____. For the benefit of _____Bank (the "Deed of Trust"), _____, trustee joins herein for the sole purpose of subordinating the lien, dignity and

priority of the Deed of Trust to these restrictive covenants. _____Bank joins herein for the sole purpose of consenting to trustee's action.

WITNESS the following signature the day and year first above written.

[_____]
BY: Its General Partner

BY: _____

TITLE: _____

Commonwealth of Virginia, City of _____, to wit:

I, _____, a notary public for the state and city aforesaid, do certify that [Name] [Title] whose name was signed on _____, 2009 in his capacity on that date to the foregoing document has acknowledged said document and signature before me in the city aforesaid.

Given under my hand and notarial seal this _____ day of _____, 2009.

_____
Notary Public

My commission expires _____.

Signature block for Bank and Trustee, if applicable.

Exhibit A

Legal description of property.

Exhibit B

Plat Map and /or Legal description of preserved area. If Plat is oversized and will be recorded separately. Exhibit B should contain a description that includes the reference to the Plat Book and Page number where the plat is recorded.