COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219
Mailing address: P.O. Box 1105, Richmond, Virginia 23218
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT

ISSUED TO
BOYD FARM, LLC
FOR
UNPERMITTED ACTIVITY

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 Boyd Farm, LLC 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. Administrative Order for Compliance ("AOC") shall mean the Order issued by USEPA In the Matter of Boyd Farms, LLC, EPA Docket. No. CWA-03-2016-0022DW.

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. "Boyd Farm" means Boyd Farm, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Boyd Farm, LLC is a "person" within the meaning of Va. Code § 62.1-44.3.

4. "Compensation" or "compensatory mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.

5. Delineation" shall mean wetland and stream delineation of pre-disturbance conditions ("Delineation") and any associated report ("Delineation Report"). A delineation identifies any and all areas at the Site which, prior to construction, were streams and/or wetlands, and shows the extent of the waters.

6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

8. "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.

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

10. "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.

11. "Impacts" means results caused by human-induced activities conducted in surface waters, as specified in § 62.1-44.15:20 A of the Code of Virginia.

12. "Impairment" means the damage, loss or degradation of the functions and values of state waters.

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

14. "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.

15. "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.

16. "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.

17. "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.

18. "Property" means the tracts of land in Goochland County, VA know as Parcel ID 18-159 (Parcel A, approximately 269 acres) and Parcel ID 18-1-55(Parcel B, approximately 504 acres) owned by Boyd Farm, LLC.

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

20. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

21. "Restoration Plan" shall mean a detailed Plan that shall include the actions to be taken to remove the material from the regulated waters, stabilize the Site, and return the Site to pre-disturbance grade and conditions.

22. "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.

23. "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.

24. "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.

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

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

27. "US EPA" means the United States Environmental Protection Agency.

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

29. "VAC" means the Virginia Administrative Code.

30. "VDACS" means the Virginia Department of Agriculture and Consumer Services.

31. "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 25-21010.

SECTION C: Findings of Fact and Conclusions of Law

1. Boyd Farm purchased the Property on August 20, 2013. The Property had been previously utilized for an ongoing silviculture operation. The northern portion of the property was logged by the previous owner prior to the property transfer, and the southern portion of the Property was logged by the previous owner shortly after the property transfer. In the fall of 2013 and again in the spring of 2014, Boyd Farm cleared, grubbed, and graded the northern and southern portion of the Property respectively in order to convert the Property from a silviculture operation into an agricultural operation.

2. On June 12, 2014, Virginia Department of Agriculture and Consumer Services ("VDACS") Staff conducted an inspection of the Property and recommended certain additional erosion and sediment control measures; which Boyd Farm immediately began to implement.

3. On June 19, 2014, DEQ Staff conducted an inspection of the Property after receiving a report that the Property had been cleared and there had been a discharge of fill material and an accumulation of sediment in state waters. Representatives of Boyd Farm were present during the inspection. Staff observed significant adverse impacts and impairments to state waters as a result of land clearing activities, grading, road construction, and the lack of erosion and sediment controls.

4. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit activities that significantly alters or degrades existing wetland acreage or functions or alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life without a Permit issued by the Director. Boyd Farm did not have a Permit.

5. On July 16, 2014, DEQ issued NOV No. 2014-07-PRO-700 for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.

6. On July 25, 2014, DEQ staff met with a representative of Boyd Farm to discuss the NOV and the steps necessary to resolve the alleged violations. Thereafter, Boyd Farm initiated additional measures to attempt to do so.

7. On September 18, 2014 and September 24, 2014, DEQ staff inspected the site in order to review the progress of interim site stabilization and discuss plans for final stabilization. DEQ requested that Boyd Farm submit formal interim and final site stabilization plans, as well as restoration plans for the impacted surface waters.

8. On January 30, 2015, DEQ met with representatives of Boyd Farm to review conceptual wetland and stream restoration and site stabilization plans.

9. On February 9, 2015, DEQ Staff conducted an inspection of the Property and observed additional impacts and impairments to state waters due to the discharge of sediment as a result of the lack of installation and maintenance of sufficient, interim land stabilization measures and the vast scale of land disturbing activity that had occurred. DEQ staff requested, and Boyd Farm began submittal of weekly progress reports regarding site stabilization measures.

10. On February 13, 2015, Boyd Farm submitted a revised final stabilization plan for the Property, which was approved by DEQ on February 16, 2015.

11. On February 27, 2015, DEQ issued NOV No. 2015-02-PRO-703 for the continued violations of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 observed on February 9, 2015.

12. On March 11, 2015, representatives of DEQ, VDACS, the US EPA, and the USACE conducted an inspection of the Property. Though minimal site stabilization work had been completed, installation of interim measures approved on February 16, 2015 was not sufficient to eliminate the ongoing substantial discharge of sediment to state waters.

13. On March 13, 2015, DEQ requested that Boyd Farm begin implementation of the approved site stabilization plan immediately and complete site stabilization no later than April 17, 2015, that Boyd Farm complete a formal delineation of state waters and schedule a site visit for review of the delineation no later than April 8, 2015, and finally, requested a restoration and compensation plan for the impacted state waters.

14. On April 3, 2015, representatives of the USACE, the US EPA, and the DEQ conducted an inspection of the Property to confirm the jurisdictional boundaries of state waters that were impacted and had experienced significant alteration as a result of the discharged of fill material and sedimentation. Additional areas of impacts to state waters were identified during the site visit and delineated.

15. On June 2, 2015, the USACE approved the jurisdictional determination for the areas known as, one and two, of the Property.

16. On June 09, 2015, Boyd Farm submitted a final impact map to specify the areas of the unauthorized discharge of sediments and fill material to state waters that were significantly altered or degraded. The final impact totals are:

	Wetlands (Acres)	Streams (Linear Feet)
Sedimentation Impacts	5.09	6,398
Direct Fill Impacts	2.84	3,987

17. On August 19, 2015, following continued stabilization efforts by Boyd Farm, Department staff met with representatives of Boyd Farm to discuss the violations and the completion of a Corrective Action Plan. On October 8, 2015, Department staff inspected Boyd Farm after a significant rain event.

18. On October 8, 2015, Department staff inspected Boyd Farm after a significant rain event. Structural stabilization measures appeared to be functioning and generally protective of surface waters; however, maintenance of these structures was needed.

19. Based on the results of the inspections, meetings, and the documentation submitted on June 09, 2015, the Board concludes that Boyd Farm has violated Va. Code § 62.144.15:20 and 9 VAC 25-210-50 as described in paragraphs above.

20. On November 03, 2015, US EPA determined that a violation of Section 301 of the CWA (22 U.S.C. § 1311) occurred at the Property and issued an Administrative Order for Compliance to Boyd Farm, EPA Docket No. CWA-03-2016.

21. In order for Boyd Farm to return to compliance, DEQ staff and representatives of Boyd Farm have agreed to the Schedule of Compliance, which is incorporated as Appendix A, Appendix B, and Appendix C 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 Boyd Farm, and Boyd Farm agrees to:

1. Perform the actions described in Appendices A, B and C of this Order; and

2. Pay a civil charge of $278,542 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

Boyd Farm 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, Boyd 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 Boyd Farm for good cause shown by Boyd 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. 2014-07-PRO-700 dated July 1, 2014 and NOV No. 2015-02PRO-703 dated February 27, 2015. 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

3. subsequent action to enforce the Order.

4. For purposes of this Order and subsequent actions with respect to this Order only, Boyd Farm admits the jurisdictional allegations, but neither admits nor denies the findings of fact and conclusions of law contained herein.

5. Boyd 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.

6. Boyd 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.

7. Failure by Boyd 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.

8. 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.

9. Boyd 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. Boyd Farm shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Boyd 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.

10. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

11. This Order shall become effective upon execution by both the Director or his designee and Boyd Farm. Nevertheless, Boyd Farm agrees to be bound by any compliance date which precedes the effective date of this Order.

12. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after Boyd Farm has completed all of the requirements of the Order;

    b. Boyd 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 Boyd Farm.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Boyd Farm from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. Any plans, reports, schedules or specifications attached hereto or submitted by Boyd 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.

14. The undersigned representative of Boyd Farm 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 Boyd Farm to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Boyd Farm.

15. 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.

16. By its signature below, Boyd Farm voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14 day of January, 2016.

Jefferson Reynolds
Director of Enforcement
Department of Environmental Quality

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

Date: 10/13/15 By: _____, Manager
(Person) (Title)
Boyd Farm, LLC

Commonwealth of Virginia
City/County of Henrico

The foregoing document was signed and acknowledged before me this 13 day of October, 2015, by Fraiser T Boyd who is Manager of Boyd Farm, LLC on behalf of the company.

Nancye Jo Poff
Notary Public

144774
Registration No.

My commission expires: 12/31/18

Notary seal:

NANCYE JO POFF
NOTARY PUBLIC
REG # 144774
MY COMMISSION EXPIRES 12/31/2018
COMMONWEALTH OF VIRGINIA

SCHEDULE OF COMPLIANCE

1. Boyd Farm shall immediately cease impacts to state waters and shall not resume such impacts unless authorization from DEQ is granted via a Permit or as part of an approved Corrective Action Plan (CAP) submitted to and approved by DEQ under the terms of this Order.

2. Restoration and Corrective Action:

    a. No later than 30 days from the effective date of this Order, Boyd Farm shall submit a final Restoration and Corrective Action Plan (the "Final RCAP") to DEQ for review and approval to restore the unauthorized impacts listed in Paragraph C (17) of this Order that have not been compensated for in Appendix Paragraph 5 or 6 below. The Final RCAP shall include measures designed to restore Stream Sedimentation Impacts and wetland Direct Fill Impacts, along with additional measures designed to prevent further sedimentation impacts to streams and wetlands on the Property. The Final RCAP shall include the information specified in Appendix B of this Order. DEQ shall respond with any written comments or objections within thirty (30) calendar days of receiving the Final RCAP from Boyd Farm, which comments or objections Boyd Farm shall promptly address to the satisfaction of DEQ. If DEQ issues no written comments or objections within thirty (30) calendar days after receiving the Final RCAP from Boyd Farm, the Final RCAP shall be deemed approved by DEQ

3. Upon DEQ approval of the Final RCAP, Boyd Farm shall begin implementation of the work specified in the Final RCAP in accordance with its terms and the schedule contained therein. Any changes to the approved Final RCAP or schedule contained therein shall not be initiated without advance notice to and approval by DEQ.

    a. If the performance criteria specified in the Final RCAP are not achieved at the end of any monitoring period, then Boyd 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, identify and propose corrective action, and a schedule necessary to achieve the performance criteria. Boyd Farm shall respond to any DEQ notice of deficiency regarding the proposed corrective action in accordance with the terms of the notice Boyd Farm shall implement the proposed corrective action in accordance with its terms and the schedule set forth and approved by DEQ.

    b. If the performance criteria specified in the Final RCAP 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 Boyd Farm shall submit to DEQ for review and approval, within 30 days of such

determination or request, a proposal to purchase the appropriate number of compensatory mitigation bank credits or contribute the appropriate amount to an in-lieu fee fund to address any remaining or substituted restoration or corrective action. Boyd Farm shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. Boyd Farm shall purchase mitigation back credits or make contributions to an in-lieu fund, as directed by DEQ in accordance with this paragraph, within 30 days of notice from DEQ.

4. Compensatory Mitigation Bank Credits:

   a. No later than 30 days from the DEQ approval of the final RCAP, Boyd Farm shall submit a proposed plan for the purchase of compensatory mitigation bank credits.

   b. Within thirty (30) calendar days of DEQ approval of the proposed plan for the purchase of compensatory mitigation bank credits, Boyd Farm, shall provide documentation to DEQ demonstrating that Boyd Farm has purchased the number of stream mitigation credits and wetland mitigation credits as approved under the DEQ approved compensatory mitigation bank credit plan.

      i. The Stream Mitigation Credits and Wetland Mitigation Credits must be purchased from a DEQ-approved mitigation bank that meets the requirements of Va. Code § 62.1-44.15:23 and 9 VAC 25-210-116 and is authorized and approved by DEQ to sell credits in the area in which the impacts occurred and have credits available (as released by DEQ) to achieve no-net-loss of existing function in all surface waters in accordance with 9 VAC 25-210-116. Multiple banks may be used to fulfill credit requirements.

      ii. Compensatory mitigation for permanent wetland impacts shall be provided at a 2:1 impact to compensation credit ratio. Sedimentation wetland impacts shall be at a ratio of 0.75:1 unless Boyd Farm or DEQ prepares a functional assessment justifying an alternate ratio acceptable to both parties to ensure no net loss of wetlands. .

      iii. The number of stream credits required must be calculated using the Unified Stream Methodology.

5. Boyd Farm may elect to request to purchase compensatory mitigation bank credits in substitution of the restoration required in the Final RCAP. Such request shall include a demonstration that the purchase of compensatory mitigation bank credits is ecologically preferable to restoration required in the RCAP. Compensatory mitigation for permanent wetland impacts shall be provided at a 2:1 impact to compensation credit ratio. Compensatory mitigation for sedimentation wetland impacts shall be provided at a 0.75:1 ratio unless Boyd Farm or DEQ prepares a functional assessment justifying an alternate ratio acceptable to both parties to ensure no net loss of wetlands. The number

of stream credits required must be calculated using the Unified Stream Methodology. Consideration and approval of such request is at the sole discretion of DEQ. Within 30 days of DEQ approval of the substitution, Boyd Farm shall purchase mitigation back credits from a DEQ-approved mitigation bank(s) that meets the requirements of Va. Code § 62.1- 44.15:23 and 9 VAC 25-210-116. The bank(s) must be authorized and approved by DEQ to sell credits in the area in which the impacts occurred and have credits available (as released by DEQ). Multiple banks may be used to fulfill credit requirements.

6. Inspection and entry.

   a. Upon presentation of credentials, Boyd Farm shall allow the board and/or USEPA or any duly authorized agent of the board and/or USEPA, at reasonable times and under reasonable circumstances, to conduct inspections of the Property which include but are not limited to:

      i. Entering the Property to inspect the restoration site;
      ii. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under Va. Code; and
      iii. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of this Order or as otherwise authorized by Va. Code.

7. Duty to provide information.

   a. Boyd Farm shall furnish to the board any information which the board may request to determine compliance with this Order.

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

Allison Dunaway
Piedmont Regional Office
VA DEQ
4949-A Cox Road
Glen Allen, VA 23060
Allison.Dunaway@deq.virginia.gov
(804) 527-5086

Todd Lutte
Office of Environmental Protection
US EPA
1650 Arch Street (3EA30)
Philadelphia, PA 19103-2029
Lutte.Todd@epa.gov
(215) 814-2099

APPENDIX B

FINAL RESTORATION AND CORRECTIVE ACTION PLAN REQUIREMENTS

1. The final RCAP shall include the following technical requirements as applicable. Upon review of the RCAP, DEQ may request additional clarification or information, and Boyd Farm shall comply with such request within the timeframe provided within the request.

a. The goals and objectives of the RCAP in terms of restoration functions and water quality benefits to state waters;
b. A location map, including latitude and longitude (to the nearest second) at the center of each restoration area;
c. An evaluation, discussion, and plan sketches of existing conditions of the proposed restoration areas, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);
d. For Streams, a summary of stream geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);
e. For streams, plan view sketch depicting the pattern and all compensation measures being employed, a profile sketch, and cross-section sketches of the proposed compensation stream.
f. For wetlands, a grading plan with existing and proposed elevations at one-foot or less contours;
g. Schedule for compensation site construction, including sequence of events with estimated dates;
h. For wetlands, a hydrologic analysis, including a water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a wet year, and a dry year;
i. For wetlands, groundwater elevation data for the site, or the location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;
j. For wetlands, design of water control structures;
k. Detailed design information for the proposed measures, including geomorphological measurements and reference reach information as appropriate;
l. Planting scheme and schedule including species, buffer width and acreage of each vegetation type proposed;
m. Livestock access limiting measures;
n. A site access plan;
o. An erosion and sedimentation control plan, if appropriate;
p. An abatement and control plan covering all undesirable plant species, listed on the Department of Conservation and Recreation's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of their presence, methods for removal, and the control of such species;
q. A schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;

r. A monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference areas; and
s. The mechanism for permanent preservation of the restoration areas.

Appendix C Financial Assurance Requirements

1. No later than December 31, 2015, based on the cost estimates approved by the DEQ, Boyd Farm shall demonstrate financial responsibility for taking any proposed corrective action in Appendix A by obtaining a letter of credit or demonstrating Boyd Farm or any mitigation services provider it has engaged to perform the corrective action has secured a performance bond with terms acceptable to DEQ. If a letter of credit is obtained, the following conditions shall apply.

   (a) 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. 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 Boyd Farm 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, Boyd Farm shall obtain alternate financial assurance and submit it to the Director.

   (b) Every year, beginning September 1, 2016, until DEQ determines financial assurance is no longer necessary, Boyd Farm shall submit an updated cost estimate for all remaining actions required by Appendix A. Whenever the cost estimate increases such that the letter of credit covers less than **75%** of the cost estimate, Boyd Farm shall, no later than December 31 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 31 of that year.

   (c) If the DEQ determines that Boyd Farm has not met its obligations under this

Order, the Director of DEQ or his designee, shall give written notice to Boyd Farm, specifying the deficiency. Any notice required hereunder shall be deemed effective if given by registered mail, return receipt requested.

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

(e) Boyd Farm may cancel the letter of credit only if alternate financial assurance acceptable to the Director is substituted as specified in this section or if Boyd Farm is released by the Director from the requirements of this Order.

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

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

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