



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY PIEDMONT REGIONAL OFFICE

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Secretary of Natural Resources

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David K. Paylor
Director

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO CLYDE W. HUDGINS, JR. AND MARY ALICE HUDGINS FOR UNPERMITTED FILLING OF WETLANDS AT 178 KHYBER PASS TRAIL, MATHEWS, VA

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 Clyde W. Hudgins, Jr. and Mary Alice Hudgins, regarding unpermitted filling of wetlands at 178 Khyber Pass Trail, Mathews, Virginia, 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. "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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "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.

5. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
6. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
7. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of 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. 9 VAC 25-210-10.
8. "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.
9. "Hudgins" means Clyde W. Hudgins, Jr. and Mary Alice Hudgins, currently residents of Mathews County, Virginia. Hudgins are "persons" within the meaning of Va. Code § 62.1-44.3.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "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.
12. "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.
13. "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.
14. "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.

15. "PRO" means the Piedmont Regional Office of DEQ, located in Glenn Allen, Virginia.
16. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
17. "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.
18. "Site" means land in Mathews County, Virginia that is 40 feet wide and 920 feet long and contains a private driveway owned by Hudgins. The Site begins on the east side of Khyber Pass Trail approximately 600 feet from the intersection of Williams Wharf Road and Khyber Pass Trail. The Site has two components that together make the property that is the Site and which contains the private driveway. The first component is 0.4820 acres of land, recorded in Plat Book 25 at page 96, is owned by Hudgins, and cuts through lot 6 which is owned by Michael Todd Stewart. Lot 6 is recorded in the Mathews County Circuit Court Clerk's Office in Deed Book 269 at page 850 and further described as Tax Map No. 29A (1) 6 and Plat Book 25 at page 96. The first component is also found at Tax Map 29A (1) 11. The Site's second component is a continuation of the first component, however, it is a 40 foot wide easement that is part of Lot 7, that begins at the edge of lot 6 and lot 7 and runs through lot 7 to Parcel 29-A-216J. Parcel 29-A-216J is owned by Mr. and Mrs. John Michael Clark. Lot 7 is currently owned by Hudgins and is recorded in deed book 271 at page 648, Plat Book 8 at page 27 and Tax Map 29A -1-7. (See Appendix B)
19. "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.
20. "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.
21. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
22. "USACE" means the United States Army Corps of Engineers.
23. "Va. Code" means the Code of Virginia (1950), as amended.

24. "VAC" means the Virginia Administrative Code.
25. "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.

SECTION C: Findings of Fact and Conclusions of Law

1. Hudgins own the Site in Mathews County, Virginia.
2. On April 1, 2010, DEQ staff received notification of potential unauthorized dredging and filling of forested wetlands at the Site.
3. On April 5, 2010, DEQ staff inspected the Site and observed that Mr. Hudgins had constructed a driveway on the Site ranging from 16 to 30 feet wide and 920 feet long from Khyber Pass Trail to a 3.07 acre lot identified on Mathews County Tax Maps as parcel 29-A-216J. DEQ staff observed that the driveway was constructed through forested wetlands as evidenced by the presence of hydric soils. DEQ staff also observed hydrophytic vegetation and wetland hydrology. DEQ staff determined that 0.49 acres of fill had been placed into non-tidal forested wetlands for the construction of the driveway without a USACE or DEQ permit. DEQ staff also observed that Mr. Hudgins had constructed a building pad and private drive on parcel 29-A-216J, totaling 0.24 acres, using fill placed into non-tidal forested wetlands. Hudgins did not have a permit for these activities.
4. Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50(A) of the VWP Permit Regulations state that except in compliance with a permit no person shall dredge, fill or discharge any pollutant into or adjacent to surface waters, excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: filling or dumping.
5. On June 7, 2010, DEQ issued NOV No. 10-05-PRO-701 for the violations listed above.
6. On July 7, 2010, Department staff met with Mr. Hudgins to discuss the violations contained in the NOV. Mr. Hudgins stated he would narrow the driveway on the Site in order to reduce the impact to the non-tidal forested wetlands.
7. On August 12, 2010, the USACE notified the owners of parcel 29-A-216J, that the unauthorized filling of the 0.24 acres of non-tidal forested wetlands on their property qualified for Corps Nationwide Permit #29. The letter stated Special Conditions that the landowners were to follow.
8. On October 13, 2010, DEQ staff met at the Site with Mr. Hudgins. Mr. Hudgins had narrowed the width of the driveway from 0.49 acres of dirt and fill, to 0.237 acres of fill

and gravel to reduce the impacts to the non-tidal forested wetlands. DEQ staff recommended how to restore the wetland areas along the sides of the driveway.

9. Based on the results of the April 5, 2010, and October 13, 2010 inspections, the July 7, 2010 meeting and the documentation submitted to date, the Board concludes that Hudgins have violated the State Water Control Law and the Regulations as described above.
10. In order for Hudgins to complete their return to compliance, DEQ staff and Hudgins have agreed to the Schedule of Compliance, which is 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 Hudgins, and Hudgins agree to:

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

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Hudgins for good cause shown by Hudgins, 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, Hudgins admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Hudgins consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Hudgins declare they have 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 Hudgins 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. Hudgins 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. Hudgins shall demonstrate that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Hudgins 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.

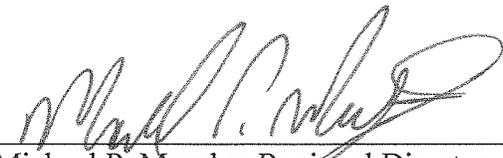
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Hudgins. Nevertheless, Hudgins agree to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Hudgins has completed all of the requirements of the Order;

- b. Hudgins petitions the Director or his designee to terminate the Order after they have 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 Hudgins.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hudgins from their 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 Hudgins 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. Any documents to be submitted pursuant to this Order shall also be submitted by Hudgins or an authorized representative of Hudgins.
- 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, Hudgins voluntarily agree to the issuance of this Order.

And it is so ORDERED this 20th day of May, 2013.



Michael P. Murphy, Regional Director
Department of Environmental Quality

Mr. Clyde W. Hudgins, Jr. voluntarily agrees to the issuance of this Order.

Date: 11-7-2012 By: Clyde W. Hudgins, Jr. Owner.
Clyde W. Hudgins, Jr.

Commonwealth of Virginia
City/County of Mathews

The foregoing document was signed and acknowledged before me this 7th day of

November, 2012, by Clyde W. Hudgins, Jr.

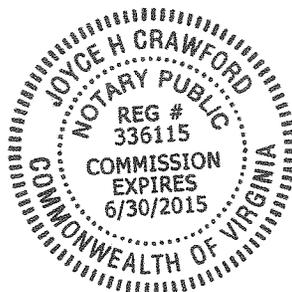
Joyce H Crawford
Notary Public

336115

Registration No.

My commission expires: June 30, 2015

Notary seal:



Ms. Mary Alice Hudgins voluntarily agrees to the issuance of this Order.

Date: 11-7-2012 By: Mary Alice Hudgins, Owner.
Mary Alice Hudgins

Commonwealth of Virginia
City/County of Mathews

The foregoing document was signed and acknowledged before me this 7th day of
November, 2012, by Mary Alice Hudgins.

Joyce H Crawford
Notary Public

336115
Registration No.

My commission expires: June 30, 2015

Notary seal:

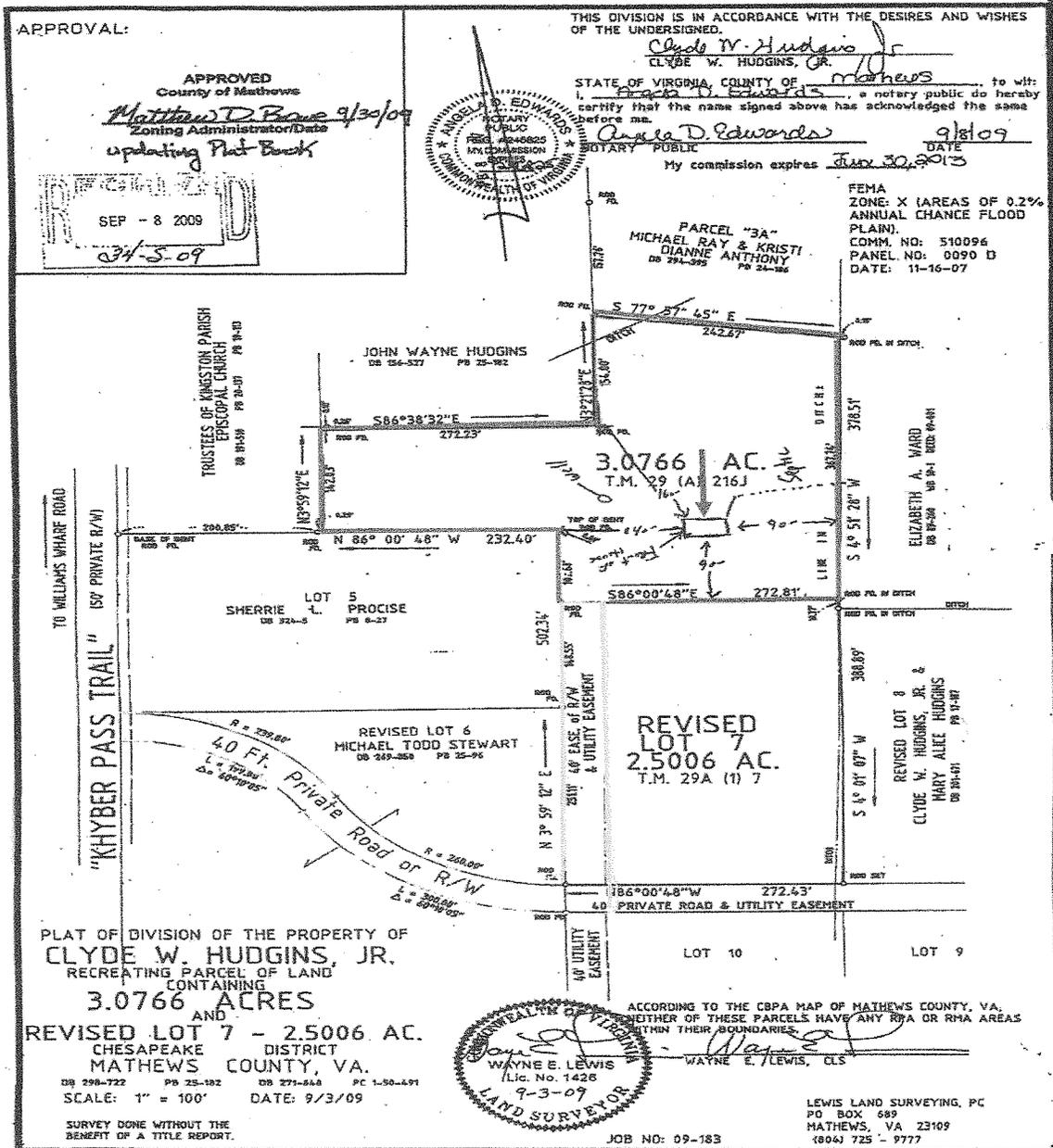


APPENDIX A SCHEDULE OF COMPLIANCE

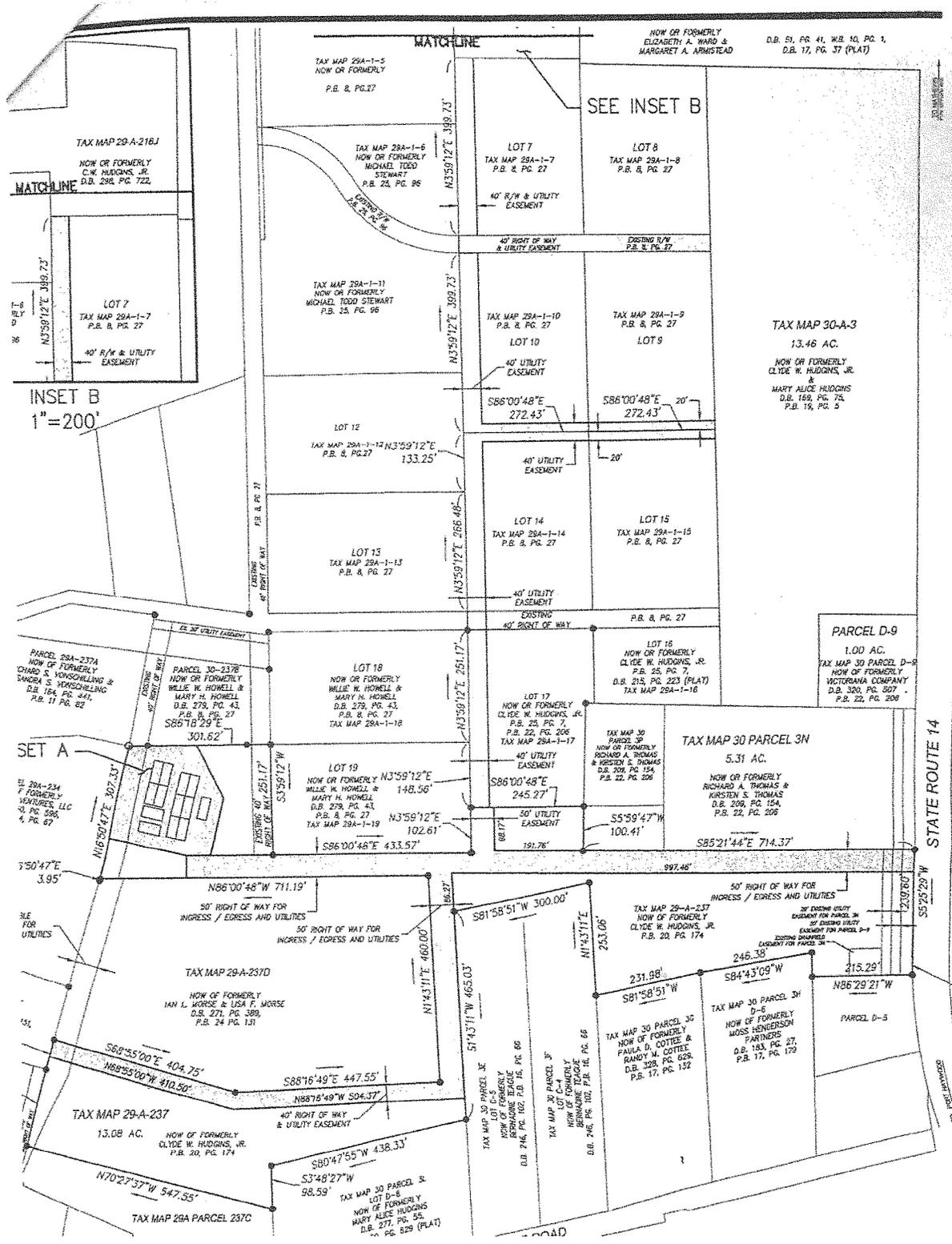
1. No later than November 15, 2012, Hudgins shall file a deed restriction, with the Clerk of the Circuit Court of Mathews County, on Lot 7 which is 2.5 acres in Mathews County, Virginia. Such deed restriction shall be placed on Lot 7, Tax Map 29A (1) 7, deed book 271, page 648-649. Hudgins shall send a copy of the filed deed restriction to the contact listed below.
2. No later than November 15, 2012, Hudgins shall file a deed restriction, with the Clerk of the Circuit Court of Mathews County, on Lot 8 which is 2.66 acres in Mathews County, Virginia. Such deed restriction shall be placed on Lot 8, Tax Map 29A (1) 8, deed book 201, page 671-672. Hudgins shall send a copy of the filed deed restriction to the contact listed below.
3. No later than February 15, 2013, Hudgins shall file a deed restriction, with the Clerk of the Circuit Court of Mathews County, on Lot 3R which is 4.0 acres in Mathews County, Virginia. Such deed restriction shall be placed on Lot 3R, plat cabinet 1, slide 73, hanger 730. (See Appendix C). The deed restriction shall reflect the assigned deed book and page number. Hudgins shall send a copy of the filed deed restriction to the contact listed below.
4. Unless otherwise specified in this Order, Hudgins shall submit all requirements of Appendix A of this Order to:

Gina Pisoni
Enforcement Specialist
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5156
804-527-5106 (fax)
Gina.Pisoni@deq.virginia.gov

APPENDIX B



Access road outlined in yellow; Parcel 29-A-216J outlined in green; red arrow shows location of house under construction.



APPENDIX C

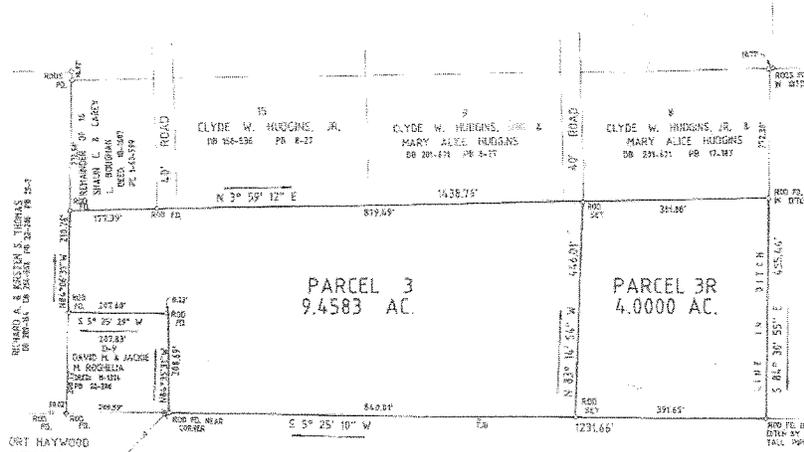
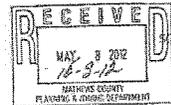
PROVAL:

According to the CPA Map of Mathews County, Va., the areas delineated within the boundary coordinates of this subdivision are in compliance with any EPA or RSEA.

Wayne E. Lewis
 Wayne E. Lewis, CLS

NOTES:
 1. Any use of Parcel 3 or Parcel 3B as shown herein will be restricted to a use other than those requiring a sewage disposal system.
 2. The areas delineated within the boundary coordinates of this subdivision may contain jurisdictional wetlands of the United States which have not been officially delineated by the US Army Corps of Engineers, Mathews County, Va. approval does not exempt this project from obtaining permits and/or approvals which may be required by the US Army Corps of Engineers and/or the Virginia DEQ.

PLAT OF SUBDIVISION
 OF THE PROPERTY OF
**CLYDE W. HUDGINS, JR. &
 MARY ALICE HUDGINS**
 CHESAPEAKE DISTRICT
 MATHES COUNTY, VA
 DB 169-752 PB 22-261
 SCALE: 1" = 150' DATE: 5/1/12
 T.M. 30 - (A) - 3



This subdivision is in accordance with the uses and wishes of the undersigned tenant.

Clyde W. Hudgins, Jr.
 Clyde W. Hudgins, Jr.
Mary Alice Hudgins
 Mary Alice Hudgins

STATE OF VIRGINIA, COUNTY OF MATHES, I, *Wayne E. Lewis*, Notary Public, do hereby certify that the names signed by the parties to this plat are the names of the parties to this plat.

Wayne E. Lewis
 NOTARY PUBLIC
 My Commission Expires 9/30/12

Wayne E. Lewis
 WAYNE E. LEWIS
 Lic No. 1426
 5-1-12
 LAND SURVEYOR

"NEW POINT COMFORT HIGHWAY" ST. RT. 14

TO MATHES CO. LEWIS LAND SURVEYING, PC
 PO BOX 689