



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Manassas NCP, LLC
FOR
BB Project
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 Manassas NCP, LLC, regarding the BB Project, 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. "Manassas NCP, LLC" means Manassas NCP, LLC a foreign limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Manassas NCP, LLC is a "person" 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. "Property" or "Parcel" means the tract of land at 9000 Freedom Center Boulevard, Manassas, Virginia 20110, in Prince William County, owned by Manassas NCP, LLC.
16. "NRO" means the Norther Regional Office of DEQ, located in Woodbridge, Virginia.
17. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
18. "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.
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. Manassas NCP, LLC owns the Property in Prince William County, Virginia.

2. On October 15, 2018, Manassas NCP, LLC submitted a Joint Permit Application to DEQ and USACE for the BB Project development. 532 stream credits and 0.44 wetland credit were purchased by Manassas NCP, LLC for this project, as documented in a January 14, 2019, submission to NRO.
3. On January 15, 2019, Department staff inspected the Property for compliance with the requirements of the State Water Control Law and the Regulations. The DEQ inspector observed 0.13 acre of isolated emergent wetland, 0.03 acre of isolated scrub-shrub wetland, and 0.06 acre of isolated forested wetland that had been impacted by construction-related filling and excavation. An additional as-yet-unimpacted wetland system identified in impact maps as Impact #1 was observed to have a stream channel flowing through the wetland delineated feature.
4. No VWP permit had been issued to Manassas NCP, LLC as of January 15, 2019.
5. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit dredging or filling of surface waters without a Permit issued by the Director. Manassas NCP, LLC does not have a Permit for the above activities
6. On January 25, 2019, DEQ issued NOV No. 1901-000931 for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.
7. On January 31, 2019, EL Consulting (on behalf of Manassas NCP, LLC) submitted a response letter to the NOV. The alleged unpermitted impacts were acknowledged and were purported to be the result of a misunderstanding of the jurisdiction of state water features in impacted areas. DEQ had advised the RP in a letter dated from October 29, 2018, that the wetlands considered non-jurisdictional for the USACE were in fact jurisdictional for DEQ, and that these wetlands should be included in their impact map.
8. On February 14, 2019, the USACE and DEQ revisited the site, and the USACE subsequently instructed Manassas NCP, LLC to perform a delineation and update impact maps on this unimpacted portion of property.
9. Based on the results of the January 15, 2019, inspection, and the documentation submitted on January 31, 2019, the Board concludes that Manassas NCP, LLC has violated Va. Code § 62.1-44.5:20 and 9 VAC 25-210-50, as described in paragraphs C(1) through C(8), above.
10. In order for Manassas NCP, LLC to complete its return to compliance, DEQ staff and representatives of Manassas NCP, LLC have agreed to 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 Manassas NCP, LLC, and Manassas NCP, LLC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$23,400** 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

Manassas NCP, LLC shall include its Federal Employer Identification Number (FEIN) 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Manassas NCP, LLC 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 Manassas NCP, LLC for good cause shown by Manassas NCP, LLC, 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, Manassas NCP, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Manassas NCP, 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. Manassas NCP, LLC 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 Manassas NCP, 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. Manassas NCP, 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Manassas NCP, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Manassas NCP, LLC 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 Manassas NCP, LLC. Nevertheless, Manassas NCP, 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:
 - a. The Director or his designee terminates the Order after Manassas NCP, LLC has completed all of the requirements of the Order;
 - b. Manassas NCP, LLC 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 Manassas NCP, LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Manassas NCP, LLC 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 Manassas NCP, LLC 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 Manassas NCP, LLC 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 Manassas NCP, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Manassas NCP, LLC.
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, Manassas NCP, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3rd day of June, 2019.



Thomas Faha, Regional Director
Department of Environmental Quality

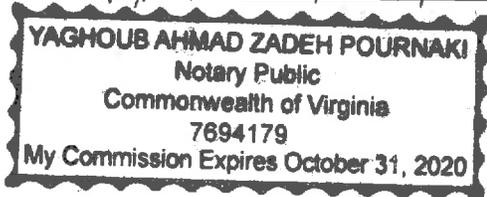
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Manassas NCP, LLC voluntarily agrees to the issuance of this Order.

Date: 4-3-2019 By: *[Signature]*, Director of Development
(Person) (Title)
Manassas NCP, LLC

Commonwealth of Virginia
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 4th day of April, 2019, by Kyle Ramstetter who is Director of Development of Manassas NCP, LLC, on behalf of the company.



[Signature]
Notary Public
7694179
Registration No.

My commission expires: October 31, 2020

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

1. Manassas NCP, LLC shall immediately cease impacts to state waters and shall not resume such impacts unless authorization from DEQ is granted via a Permit.
2. No later than 30 days after the signature of this Order, Manassas NCP, LLC shall complete a wetland delineation of the unimpacted portion Property, as the USACE requested on February 20, 2019. The delineation shall be performed in accordance with the United States Army Corps of Engineers Wetland Delineation Manual, Technical Report Y-87-1, January 1987, Final Report, together with any applicable regional supplements.
3. Manassas NCP, LLC shall request a wetland confirmation from the USACE and provide the confirmation results to DEQ within five days of receipt of the USACE confirmation.
4. Updated impact maps resulting from the wetland delineation shall be submitted to DEQ within 30 days of USACE wetland confirmation.
5. If further compensatory mitigation is required, then Manassas NCP, LLC shall submit proof of purchase of the appropriate number of stream and/or wetland compensation credits from a DEQ-approved mitigation bank or in-lieu fund that is authorized and approved by DEQ to sell credits in the area in which the impacts occur and has credits available (as released by DEQ) to achieve no-net-loss of existing wetland acreage and no-net-loss of function in all surface waters in accordance with 9 VAC 25-210-116.
6. Unless otherwise specified in this Order, Manassas NCP, LLC shall submit all requirements of Appendix A of this Order to:

**VA DEQ – NRO Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193**