



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Real Investments, Inc.  
FOR  
Sawyer Meadows Subdivision  
Permit No. WP4-11-0973**

**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 Real Investments, Inc. regarding the Sawyer Meadows Subdivision, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms Real Investments e 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. "Real Investments" means Real Investments, Inc. a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Real Investments is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "Compensation" or "Compensatory Mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resources.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the

- Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
  6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
  7. "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.
  8. "Permit" or "Virginia Water Protection Permit" means Permit No. WP4-11-0973 issued to Real Estate Investments, Inc., predecessor to Real Investments, Inc., for 2283 Princess Anne Road, Virginia Beach, 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. The Permit was issued January 12, 2012, modified January 14, 2013, and expires on January 11, 2019.
  9. "Property" means the Sawyer Meadows subdivision, located at extension to Bodnar Lane of the Highgate Greens neighborhood, Virginia Beach, VA, developed by Real Investments. The Property was created by subdivision of 2283 Princess Anne Road, Virginia Beach, Virginia.
  10. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
  11. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
  12. "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.
  13. "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](#).
  14. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
  15. "Va. Code" means the Code of Virginia (1950), as amended.
  16. "VAC" means the Virginia Administrative Code.
  17. "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. Real Investments owned the Property, a 12-lot residential subdivision and associated infrastructure located in Virginia Beach, Virginia.
2. The Permit authorizes Real Investments to permanently impact 1.578 acres of surface waters, including 1.544 acres of forested wetlands and 0.034 acres of open water ditch at the Property.
3. On July 2, 2015, DEQ staff inspected the Property for compliance with the requirements of the State Water Control Law, the Regulations and the Permit. DEQ staff observed that the boundary of forested wetlands associated with Lot 10 did not match the design and orientation of avoided wetlands on the permitted drawings or the surveyed plat recorded with the Permit-required Declaration of Restrictions (recorded by the City of Virginia Beach on March 7, 2013) for preservation of 4.762 acres. Portions of the forested wetlands had been cleared, grubbed, and graded with sod placed in the majority of the areas. Also, a drainage drop inlet had been installed in the area. A subsequent review of aerial photography supported DEQ staff on-site observations that additional wetlands had been impacted. Based upon available information and Property observations, approximately 0.04 acres of forested wetlands had been impacted, not authorized by the Permit.
4. DEQ staff conducted a review of Real Investment files and made the following observations:
  - a. No documentation was available that silt fencing or flagging of avoided wetlands was installed prior to commencement of land clearing operations in Lot 10 area.
  - b. Construction monitoring reports did not include that unauthorized wetland impacts had been taken.
5. Va. Code § 62.1-44.15:20.A, 9 VAC [25-210-50](#), and Part III.A, B., and Q prohibits excavation, filling or dumping, or new activities to cause draining or that otherwise significantly alters or degrades existing wetland acreage or functions. The permittee shall comply with all conditions of the Virginia Water Protection General Permit, and shall take all reasonable steps to minimize or prevent impacts in violation of the Virginia Water Protection General Permit.
6. Part I.C.10 of the Permit requires flagging of all non-impacted surface waters within 50 feet of permitted activities and within the project or right-of-way limits to preclude unauthorized disturbances to surface waters. All avoided wetlands on site to be clearly demarcated with orange snow or silt fencing prior to commencement of land clearing operations and subsequent identification via appropriate signage post-stabilization.
7. Part II.C.3 of the Permit requires Real Investments to submit to DEQ construction monitoring reports, and such reports include a summary of permit non-compliance events or problems encountered, subsequent notifications, and corrective actions.
8. On September 9, 2015, DEQ issued Real Investments a NOV for the violation of Part III.A., B., and Q, Part I.C.10, and Part II.C.3 of the Permit.
9. On October 2, 2015, Department staff met with representatives of Real Investments, visited the Property on October 9, 2015, and met again on January 25, 2016 with representatives of Real Investments to discuss the NOV.

10. Based on the results of the July 2, 2015 inspection, and the October 2, 2015, October 9, 2015, and January 25, 2016 meetings, the Board concludes that Real Investment has violated Va. Code § 62.1-44.15:20.A, 9 VAC [25-210-50](#), Part III.A., B., and Q, Part I.C.10, and Part II.C.3, as described in paragraphs C(3) through C(7), above.
11. By letter dated April 28, 2016, DEQ received notification that Real Investments had purchased 0.15 acres mitigation credits for Project (Permit) WP4-11-0973 as 3:1 compensation ratio for the 0.04 unauthorized forested wetland impacts. The credits were purchased from a DEQ-approved mitigation bank that is authorized and approved by DEQ to sell credits in the area in which the impacts occurred and had 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](#).
12. Real Investments has submitted documentation that verifies that the violations described in paragraphs C3 through C10, above, have been corrected..

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Real Investments, and Real Investments agrees to pay a civil charge of \$5,750.00 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

Real Investments 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, Real Investments 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 Real Investments for good cause shown by Real Investments, 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 the NOV dated September 9, 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 subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Real Investments admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Real Investments 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. Real Investments 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 Real Investments 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. Real Investments 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. Real Investments shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Real Investments 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 Real Investments. Nevertheless, Real Investments 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 Real Investments has completed all of the requirements of the Order;
- b. Real Investments 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 Real Investments .

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

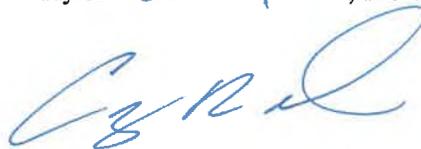
12. Any plans, reports, schedules or specifications attached hereto or submitted by Real Investments and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Real Investments 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 Real Investments to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Real Investments.

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, Real Investments voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16<sup>th</sup> day of February, 2017.



Craig R. Nicol, Regional Director  
Department of Environmental Quality

Real Investments, Inc. voluntarily agrees to the issuance of this Order.

Date: 12/15/16 By: [Signature] President  
(Person) (Title)  
Real Investments, Inc.

Commonwealth of Virginia  
City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 15th day of December  
2016, by Brian C. Large who is  
President of Real Investments, Inc. on behalf of the company.

Cynthia Paciulli Lane  
Notary Public

7168077

Registration No.

My commission expires: Dec. 31, 2020

Notary seal:

