COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
WATERMARK PARTNERS, LLC
FOR
WATERMARK SUBDIVISION, CHESTERFIELD VIRGINIA
Permit No. 06-2855

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 Watermark Partners, LLC, regarding Watermark Subdivision, Chesterfield, Virginia, 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 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. "E&S" means erosion and sedimentation.

7. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.

8. "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.

9. "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.

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" means individual permit No. 06-2855, issued by DEQ to Watermark Partners, LLC, on October 11, 2007, and extended on August 20, 2013, 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 Glen Allen, Virginia.

16. "Property" or "Parcel" means the following tracts of land located at or near Watermark Residential Subdivision, in Chesterfield County, Virginia; 1) Watermark Subdivision Section A2 recorded in the Chesterfield County Circuit Court Clerk's Office in Plat Book 217 page 48-49, 2) tract of land containing impacts A and S recorded in the Chesterfield County Circuit Court Clerk's Office in Deed Book 8157 page 998, and 3) tract of land containing impact O recorded in the Chesterfield County Circuit Court Clerk's Office in Deed Book 6498 page 871.

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. "SWMP" means storm water management pond.

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

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

25. "VAC" means the Virginia Administrative Code.

26. "VWP" means Virginia Water Protection.

27. "VWPP" 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.

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

29. "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. Watermark owns in part and developed the Property in Chesterfield County, Virginia.

2. On October 11, 2007, DEQ issued the Permit to Watermark for wetland impacts associated with the development of Watermark Subdivision. The Permit was extended on August 20, 2013, and expires on October 10, 2018.

3. On April 23, 2013, DEQ staff conducted an inspection at the Property and a file review. DEQ staff inspected the Property for compliance with the requirements of the State Water Control Law, the Regulations and compliance with the Permit. The DEQ inspector observed the following:

   a) A rock check dam had been constructed within state waters below impact O. The check dam was observed to be 8 feet long, 7 feet wide and 4 feet deep. The permit did not authorize this impact to state waters, and DEQ did not receive notice of additional temporary impacts.

      9 VAC 25-210-180 F(8) states, "[a] modification is not required subsequent to issuance for additional temporary impacts to surface waters, provided DEQ is notified in writing regarding additional temporary impacts, and the area is restored to preexisting conditions."

      §62.1-44.15:20 (A) states, "[e]xcept in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical,

chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.

9 VAC 25-210-50 (A) states, "[e]xcept in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, withdraw surface water, otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

b) Sediment was observed in the wetland headwaters of Watermark Lake in an area not authorized for impact, at the outfall of a stormwater conveyance channel between impacts "A" and "S."

§62.1-44.15:20 (A) states, "[e]xcept in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.

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c) Erosion and sediment controls at impact area "D" were failing and allowing sediment to escape containment.

VWP Permit 06-2855 Part I.C.24 states "[e]rosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 . . .. These controls shall be placed prior to clearing and grading activities and shall be maintained in good working order, to minimize impacts to surface waters. These controls shall remain in place only until clearing and grading activities cease and these areas have been stabilized."

§62.1-44.15:20 (A) states, "[e]xcept in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.

9 VAC 25-210-50 (A) states, "[e]xcept in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, withdraw surface water, otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

d) There was no flagging or inadequate flagging of non-impacted surface waters within 50 feet of permitted activities at impact area "D," at the end of the stormwater channel between impact areas "A" and "S." and below impact area "O."

VWP Permit 06-2855 Part I.C.25, states, "[a]ll *non-impacted* wetlands, streams, and designated upland buffers that are within the project or right-of-way limits, and that are within fifty feet of any project activities, shall be clearly flagged or demarcated for the life of the construction activity within that area. All non-impacted open water areas within the project or right-of-way limits, and that are within fifty feet of any project activities, shall be clearly flagged or demarcated, as practicable, for the life of

the construction activity within that area. The permittee shall notify all contractors and subcontractors that *no activities are to occur in these marked areas*.

e) The construction monitoring report due by April 10, 2013, was not received.

VWP Permit 06-2855 Part I.H.10, states, "[c]onstruction Monitoring Reports shall be submitted to DEQ quarterly. The reports shall be submitted by the 10th calendar day of the month after the quarter in which monitoring takes place."

4. On June 12, 2013, DEQ issued NOV No. 13-06-PRO-701 to Watermark for the violations described in paragraph C(3) above.

5. On July 8, 2013, DEQ staff met with representatives of Watermark to discuss the violations.

6. On, July 25, 2013, DEQ staff confirmed the construction monitoring report had been submitted on March 19, 2013, and received by the USACE on March 22, 2013.

7. On November 8, 2013, DEQ staff conducted file review and a site visit at the Property and confirmed that Watermark was now in compliance with the Permit.

8. Based on the results of the site inspections, review of the Permit file, and the July 8, 2013, meeting, the Board concludes that Watermark has violated the Permit conditions listed above, Va. Code § 62.1-44.15:20(A), 9 VAC 25-210-50(A) and 9 VAC 25-210-180 F(8) as described above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Watermark and Watermark agrees to:

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

2. Pay a civil charge of $13,000.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
March 1, 2014	$1,625 or balance
June 1, 2014	$1,625 or balance
September 1, 2014	$1,625 or balance
December 1, 2014	$1,625 or balance
March 1, 2015	$1,625 or balance
June 1, 2015	$1,625 or balance
September 1, 2015	$1,625 or balance
December 1, 2015	$1,625 or balance

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Watermark. Within 15 days of receipt of such letter, Watermark shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

4. 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

5. Watermark 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Watermark for good cause shown by Watermark, 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, Watermark admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Watermark 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. Watermark 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 Watermark 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. Watermark 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. Watermark shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Watermark 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 Watermark. Nevertheless, Watermark 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 Watermark has completed all of the requirements of the Order;

    b. Watermark 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 Watermark.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Watermark 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 Watermark 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 be submitted by Watermark or an authorized representative of Watermark.

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, Watermark voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 4th day of March, 2014.

Michael P. Murphy, Regional Director
Department of Environmental Quality

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Watermark Partners, LLC voluntarily agrees to the issuance of this Order.

Date: 12/18/13 By: George L Bryant, III, MEMBER
(Person) (Title)
Watermark Partners, LLC

Commonwealth of Virginia

City/County of Henrico

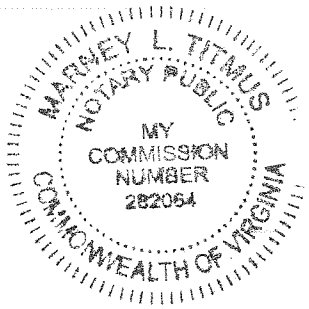
The foregoing document was signed and acknowledged before me this 19th day of December, 2013, by George L. Bryant, III who is Member of Watermark Partners, LLC on behalf of the company.

Marney L Titus
Notary Public

282064
Registration No.

My commission expires: 11/30/15

Notary seal:



APPENDIX A
SCHEDULE OF COMPLIANCE

Watermark agrees to the following:

1. During the spring of 2014, but no later than May 1, 2014, Watermark shall seed the wetland where the check dam has been removed at impact area O with an approved wetland seed mix. Watermark shall submit photographic evidence of seed growth by June 30, 2014. If DEQ determines it to be necessary, Watermark shall perform any corrective actions to comply with the Permit and/or Order.

2. Unless otherwise specified in this Order, Watermark 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