



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Walter E. Archer, Jr.,
14777 Brickhouse Drive
Disputanta, VA 23842

21 AUG 2008

Re: EPA Docket No. CWA-03-2008-0382DW
ADMINISTRATIVE ORDER FOR COMPLIANCE

Dear Mr. Archer:

Enclosed is an Administrative Order for Compliance that requires you to mitigate for unauthorized work on the property located at 14777 Brickhouse Drive, Disputanta, Prince George County, Virginia, 23842, which you own or control. The Order requires mitigation for the environmental harm caused by the unlawful discharge to waters of the United States. The U.S. Environmental Protection Agency (EPA) has issued this Order under the authority of Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a).

The CWA prohibits discharges to waters of the United States, including dredge or fill material, without a permit from the U.S. Army Corps of Engineers ("Corps"). Activities you have performed have resulted in discharges to jurisdictional waters of the United States without a permit. These activities constitute a violation of Section 404 of the CWA. These actions include the placement of fill material into approximately 3.4 acres of jurisdictional wetlands on the property. To come into compliance you shall submit a Restoration Plan for the impacted areas to EPA for approval within 30 days of the effective date of this Order. The Plan shall address removal of the berm surrounding the pond, reducing coverage from 1.18 acres to 0.8 acres for a total reduction of 0.38 acres at a removal rate set forth in the Order. In addition you shall execute a deed restriction, similar in form to the draft attached to the Order as Exhibit "B."

EPA is prepared to answer any questions you may have. Carol Petrow is assigned to this matter and may be reached by phone at 215-814-2789.

Sincerely,

for 
John R. Pomponio, Director
Environmental Assessment and
Innovation Division

Enclosure

cc: Nora Iseli - USACE

21 AUG 2008
10:29

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

21 AUG 2008

In The Matter of)	Proceeding Under Section 309(a)
Walter E. Archer, Jr.)	of the Clean Water Act,
14777 Brickhouse Drive)	33 U.S.C. § 1319(a)
Disputanta, VA 23842)	EPA Docket No. CWA-03-2008-0382DW
Respondent)	ADMINISTRATIVE ORDER
Property located 14777 Brickhouse Dr.)	FOR COMPLIANCE
Disputanta, Virginia 23842)	

I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance ("AO") is issued under the authority vested in the United States Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) ("CWA" or "Act"). The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has redelegated it to the Director of the Environmental Assessment and Innovation Division ("EAID").

II. FINDINGS

1. Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
2. Respondent is the owner of the "Site," property located at 14777 Brickhouse Dr., Disputanta, Prince George County, Virginia, 23842 and identified on the attached map labeled Exhibit "A." The Site contains areas which are sufficiently inundated or saturated by surface or ground water to support (and under normal circumstances do support) a prevalence of vegetation adapted for life in saturated soil conditions ("wetlands") and have a hydrological connection to a relatively permanent water body, Blackwater River, which is connected to Warwick Swamp, both of which are considered navigable waters within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 33 C.F.R. § 323.2(a); 40 C.F.R. § 232.2, and 40 C.F.R. § 122.2.
3. Commencing in or about July 2002, and continuing for an indefinite period of time, Respondent, or persons acting on behalf of Respondent, operated

equipment, including, but not limited to, heavy machinery which excavated a stream to build a pond and discharged the fill material into approximately 3.4 acres of jurisdictional wetlands on the Site.

4. The term "fill material" within the meaning of 40 C.F.R. § 232.2, includes any material placed in waters of the United States which has the effect of replacing any portion of the water with dry land or changing the bottom elevation of any portion of the water.
5. The equipment referenced in paragraph II.4, above, which has discharged and continues to discharge fill material to waters of the United States, constitutes a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
6. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant, which includes fill material, from point sources to waters of the United States except in compliance with a permit issued by the Secretary of the Army under Section 404 of the Act, 33 U.S.C. § 1344.
7. Section 502(6) of the Act, 33 U.S.C. § 1362(6) defines "pollutant" to include, *inter alia*, rock and sand.
8. At no time during the discharge of fill material to the waters of the United States located on the Site did the Respondents have a permit from the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344.
9. Respondents, by discharging fill material to the waters of the United States without authorization, have violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

III. ORDER FOR COMPLIANCE

Therefore, this 21st day of August, 2008, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), to do the following:

10. Within thirty (30) days of the effective date of this Order, Respondent shall submit a Restoration Plan ("Plan") for the impacted areas to EPA for approval. The Plan should address removal of the berm surrounding the pond within twenty-four months of approval of the Plan. Respondent shall remove the berm surrounding the pond, reducing coverage from 1.18 acres to 0.8 acres for a total

reduction of 0.38 acres at a removal rate of at least one half of the work to be completed each year, or such sooner period of time as is possible in accordance with the Restoration Plan. All debris shall be placed in an upland location.

11. After review of the Plan, EPA will: a) approve the plan, in whole or in part; b) approve the plan upon specified conditions; c) modify the plan to cure any deficiencies and approve the plan as modified; d) disapprove the plan, in whole or in part; or e) any combination of the above.
12. If EPA disapproves all or part of the Plan, Respondent shall, within fourteen (14) days of receipt of EPA's disapproval, correct the deficiencies and resubmit the plan for approval. EPA retains the right, if the plan is not approved as provided in this Order, to order restoration in accordance with a plan developed by EPA. Upon approval of the plan (including any EPA required conditions or modifications), Respondent shall implement the plan as approved by EPA as provided below. All restoration work shall be completed within twelve (12) months of EPA's approval of the plan.
13. In addition, Respondent shall execute a deed restriction, similar in form to the draft attached hereto as Exhibit "B." The deed restrictions shall be on 5.97 acres which comprises the parcel on the west end of the pond and which has been marked as Easement Area A and 9.03 acres which has been marked as Easement Area B on the map attached hereto as Exhibit "C."
14. Within the deed restricted area the Respondent is permitted minimum cutting of brush to maintain a foot path in each area.
15. Implementation of this work shall be accompanied by a sedimentation and erosion control plan approved by the Prince George County Conservation District with a copy sent to EPA.
16. Respondent shall notify EPA upon completion of the Work. EPA may inspect the Site to ensure strict compliance with this Order and the terms of the approved Restoration Plan. EPA may continue to monitor the site to ensure the protection of wetlands.
17. Respondents' failure to complete the work in a manner consistent with this Order shall be deemed a violation of this Order.
18. The Restoration Plan and all other correspondence should be sent to:

Jeffrey D. Lapp, Associate Division Director
Office of Environmental Program (3EA30)
United States Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

IV. GENERAL PROVISIONS

19. All submissions provided pursuant to this AO shall be signed by Respondents and shall include the following certification:

"I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
20. Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations of this AO.
21. Respondents' compliance with the terms of this Order shall not relieve Respondent of its obligation to comply with all applicable provisions of the Clean Water Act or any other Federal, State or local law or regulation. Nor does this Order constitute a waiver or modification of the terms or conditions of any issued permit.
22. Violation of the terms of this Order may result in further EPA enforcement action including, but not limited to, imposition of administrative penalties, 33 U.S.C. § 1319(g), and/or initiation of judicial proceedings that allow for civil penalties of up to \$32,500 per day, 33 U.S.C. §§ 1319(b) and (d), for each day of violation that occurs, and/or for the criminal sanctions of imprisonment and fines of up to \$50,000 per day, 33 U.S.C. § 1319(c).

V. EFFECTIVE DATE

23. The effective date of this Order shall be the date of receipt of the executed document.

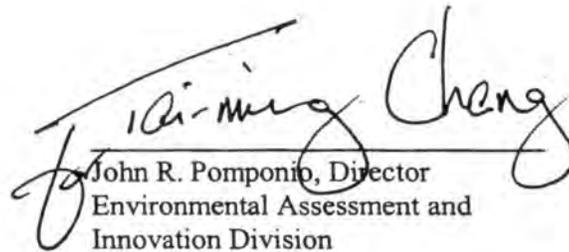
VI. NOTICE OF INTENT TO COMPLY

24. Within ten (10) days of the effective date of this Order, Respondent shall submit to EPA a Notice of Intent to Comply with the Order. The Notice shall be submitted to:

Jeffrey D. Lapp, Associate Division Director
Office of Environmental Program (3EA30)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

IT IS SO ORDERED:

Date: August 21, 2008


John R. Pomponio, Director
Environmental Assessment and
Innovation Division

CERTIFICATE OF SERVICE

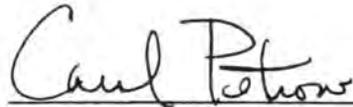
I hereby certify that on this date I caused to be sent the original of the attached Administrative Order on Compliance on Consent to the following parties:

Regional Hearing Clerk, Region III,
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

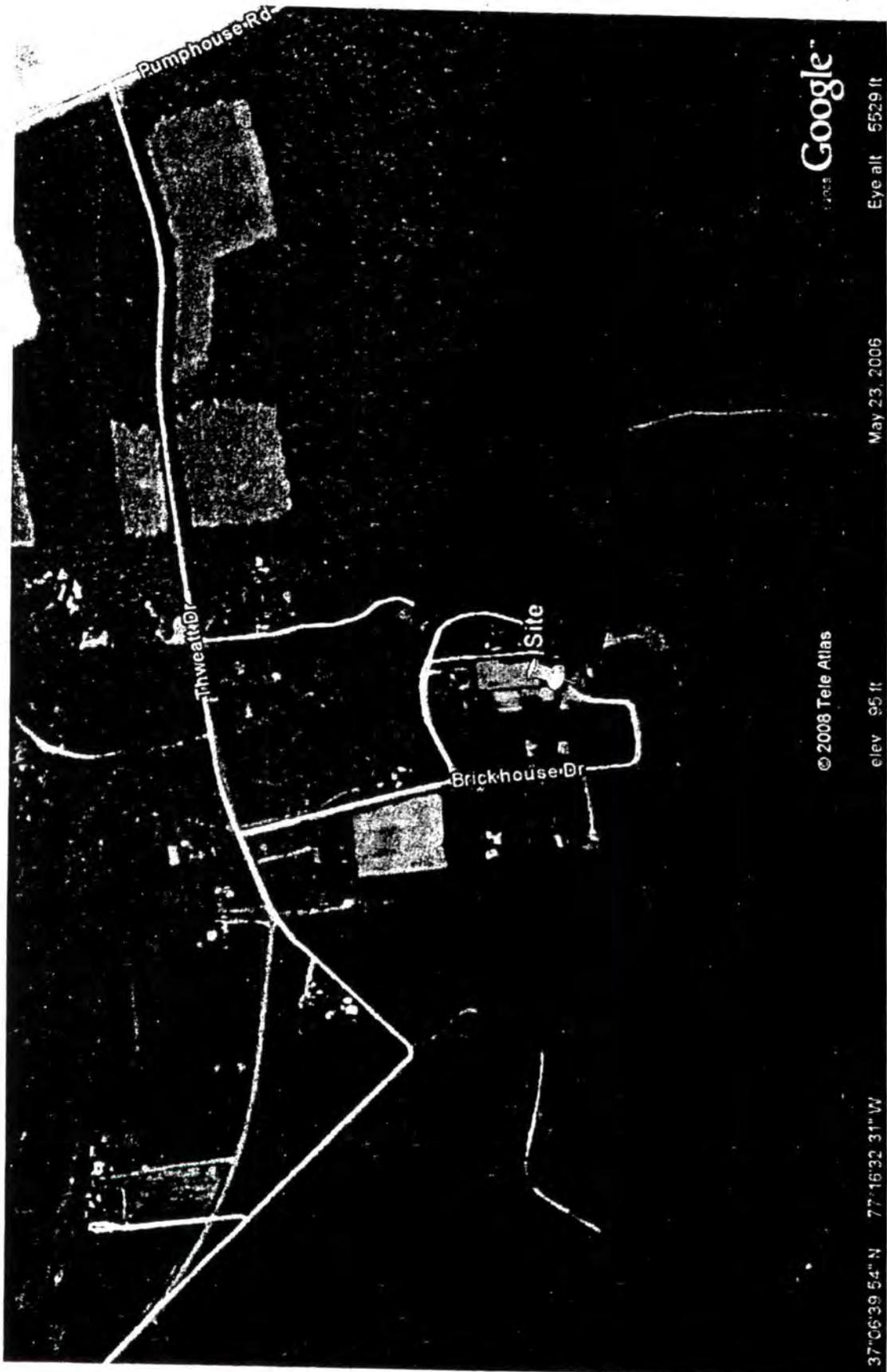
with copies to:

Walter E. Archer, Jr.
14777 Brickhouse Dr.
Disputanta, VA 23842

Date: August 21, 2008



Carol Petrow, Biologist
Office of Environmental Programs



CWA-03-2008-0382DW

Exhibit A

Tax Map No. _____

**DECLARATION OF RESTRICTIONS
AFFECTING THE ARCHER PROPERTY**

THIS DECLARATION OF RESTRICTIONS, made this _____ day of _____ 2008,
by _____ ("Owner").

WHEREAS, Owner is the owner of the property, more fully described on Exhibit "A", attached hereto, located in the City of Disputanta; it being the same property conveyed to _____ by deed from _____, dated _____, and recorded in the Clerk's Office of the Circuit Court of the City of Disputanta, Virginia (the "Clerk's Office") and recorded in Deed Book _____, at page _____ (the "Property").

WHEREAS, Owner desires to impose on said Property, a restrictive covenant expressing Owner's intent to preserve 15 acres of said Property, as depicted on Exhibit "B", and described as "Wetlands Subject To Restrictive Covenant", in perpetuity in its natural state, as detailed below.

NOW, THEREFORE, THIS DECLARATION WITNESSETH: the Owner does hereby declare, covenant and agree, for itself and its successors and assigns, that the Property described as Wetlands Subject to Restrictive Covenant on Exhibit "B" shall be hereafter held, leased, transferred, and sold subject to the following covenants and restrictions which shall run with the land and be binding on all parties and persons claiming under them.

A. The Property described as Wetlands Subject to Restrictive Covenant, shown on Exhibit "B", attached hereto, shall be preserved in perpetuity in its natural state by prohibiting the wetland destruction or alterations, building construction, addition of fill material, cultivation, pruning, and/or tree harvesting following completion of wetlands restoration activities set forth in the provisions of the Administrative Order ("AO") issued by the United States Environmental Protection Agency, Region III.

B. Additionally, the following activities shall be prohibited on the Wetlands Subject to Restrictive Covenant:

1. Destruction or alteration of waters of the U.S on the Property other than those authorized by the AO and/or the EPA;
2. Construction, maintenance or placement of any structures or fills including, but not limited to buildings, mobile homes, fences, signs other than those which currently exist, however, boardwalks, wildlife management structures, observation decks, and unpaved foot trails may be placed within the preservation area provided that any such structure

permits the natural movement of water and preserves the natural contour of the ground and subject to prior written approval by EPA;

3. Ditching, draining, diking, damming, filling, excavating, grading, plowing, flooding/ponding, mining drilling, placing of trash and yard debris or removing/adding topsoil, sand or other materials, or any building of roads or alteration in the topography of the land in any manner except for maintenance of existing foot trails;

4. Livestock grazing, inhabiting or otherwise entering the preservation area;

5. Using fertilizers or spraying with biocides;

6. Cultivating, harvesting, cutting, removing, destroying, logging, planting, and pruning of trees and plants except as authorized by AO and/or the EPA to construct or maintain foot trails;

7. Dumping of ashes, trash, garbage or other unsightly or offensive material, and changing of the topography through the placing of soil or other substances or material such as fill or dredged material, nor shall such activities be conducted on the protected Property or adjacent property which could cause erosion or siltation on the protected Wetlands Subject to Restrictive Covenant;

C. AMENDMENTS – The covenants contained herein shall not hereafter be altered in any respect without the express written approval and consent of the Owner, or its successor in interest, and the EPA. The Owner or its successor may apply to the Corps and EPA for vacation or modification of this Declaration, however, after their recording, these restrictive covenants may only be amended or vacated by a recorded document signed by the EPA and the Owner and its successor in interest.

D. COMPLIANCE, INSPECTIONS AND ENFORCEMENT – The EPA and its authorized agents shall have the right to enter and go upon the Property to inspect the Property and take actions necessary to verify compliance with these restrictive covenants. The restrictive covenants herein shall be enforceable by any proceeding at law or in equity, or administrative proceeding by the EPA against Owner or its successor in interest. Failure by the EPA or any owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

E. SEPARABILITY PROVISION – The provisions hereof shall be deemed individual and severable and the invalidity or partial invalidity or unenforceability of any one provision or any portion thereof shall not affect the validity or enforceability of any other provision thereof.

F. These covenants are to run with the land and shall be binding on all parties and person claiming under them. These covenants are imposed by the Owners freely and voluntarily, in order to assure that the wetland impacts pursuant to the Permit shall be minimal.

CONSENT OF LENDER AND TRUSTEE

Owner is the maker of a note dated _____, secured by, among other things, a deed of trust dated _____ from Owner to _____, as trustee, recorded in the Clerk's Office at Deed Book _____, Page _____, for the benefit of _____ Bank (the "Deed of Trust"). _____, trustee joins herein for the sole purpose of subordinating the lien, dignity and priority of the Deed of Trust to these restrictive covenants. _____ Bank joins herein for the sole purpose of consenting to Trustee's actions.

WITNESS the following signature the day and year first above written.

Name:
Title:

COMMONWEALTH OF VIRGINIA
CITY OF _____, to wit:

I, _____, a notary public for the Commonwealth of Virginia, do hereby certify that _____, whose name was signed on _____, 2008 in his capacity on that date to the foregoing document has acknowledge said document and signature before me in the city aforesaid.

Given my hand and seal this _____ day of _____, 2008.

Notary Public

My commission expires _____

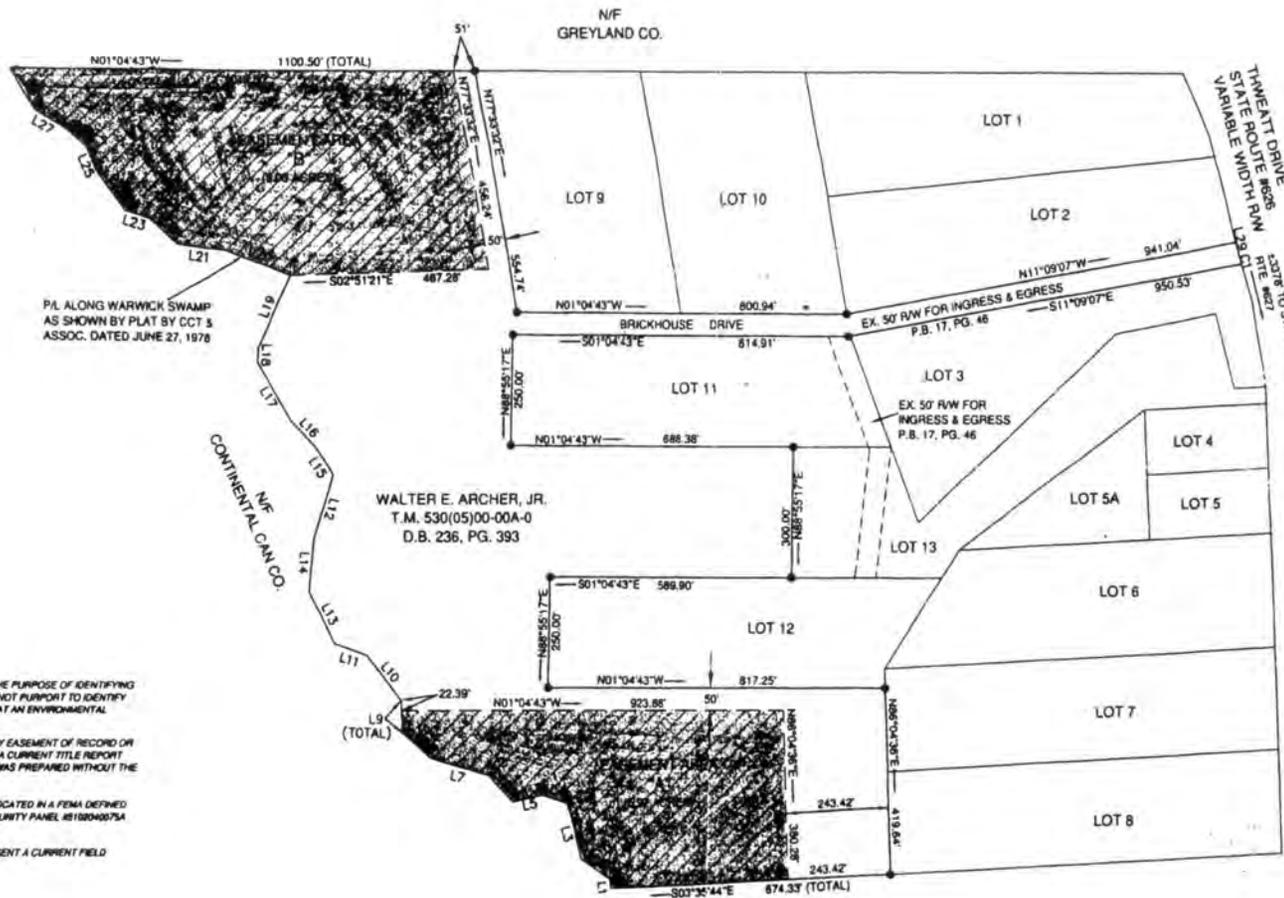
Name:
Trustee

Exhibit "A"

Legal description of the property

Exhibit "B"

Plat Map and/or Legal description of preserved area. If Plat is oversized and will be recorded separately, Exhibit "B" should contain a description that includes the reference to the Plat Book and Page Number where the plat is recorded.



LINE	BEARING	LENGTH
L1	N 82°48'33" E	20.30
L2	N 30°54'45" E	88.07
L3	N 73°3'56" E	129.35
L4	N 16°17'27" E	65.50
L5	N 12°57'57" W	73.17
L6	N 43°56'38" E	83.74
L7	N 14°30'16" E	143.26
L8	N 38°27'33" E	87.41
L9	N 85°29'17" E	73.16
L10	N 49°28'39" E	131.05
L11	N 16°42'37" E	82.08
L12	S 73°56'33" E	150.87
L13	N 61°4'38" E	132.08
L14	S 87°28'56" E	120.27
L15	N 56°16'21" E	79.22
L16	N 45°17'29" E	82.41
L17	N 37°21'5" E	153.73
L18	S 88°32'14" E	31.76
L19	S 67°3'35" E	178.87
L20	N 18°34'46" E	167.20
L21	N 4°22'39" E	112.75
L22	N 38°13'32" E	87.57
L23	N 16°7'27" E	61.61
L24	N 49°37'8" E	101.00
L25	N 65°8'35" E	67.25
L26	N 36°29'39" E	79.27
L27	N 28°44'14" E	71.18
L28	N 57°3'6" E	114.84
L29	S 73°5'22" W	30.00

CURVE	DELTA	LENGTH
C1	00°38'03"	26.26



COMPILED PLAT
OF
TWO EASEMENT AREAS
SITUATED OFF OF THWEATT
DRIVE - STATE ROUTE #626
7101 THWEATT DRIVE

TEMPLETON DISTRICT
PRINCE GEORGE COUNTY, VA
MARCH 27, 2008 SCALE: 1"=200'

320 c charles dinnmock parkway
colonial heights, va 23834
telephone: 804.520.9015
facsimile: 804.520.9016
email: cctownes@townespc.com

DRAWN BY: W.A.L.
CHECKED BY: C.A.T.

THIS SURVEY WAS MADE IN THE PURPOSE OF IDENTIFYING LEGAL BOUNDARIES AND DOES NOT PURPORT TO IDENTIFY ENVIRONMENTAL FEATURES THAT AN ENVIRONMENTAL ASSESSMENT MIGHT IDENTIFY.

THIS SURVEY IS SUBJECT TO ANY EASEMENT OF RECORD OR OTHER PERTINENT FACTS THAT A CURRENT TITLE REPORT MIGHT IDENTIFY. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT.

THIS PROPERTY IS PARTIALLY LOCATED IN A FEMA DEFINED FLOOD PLAIN ZONE A & C. COMMUNITY PANEL #815040075A EFFECTIVE DATE: MAY 1, 1980

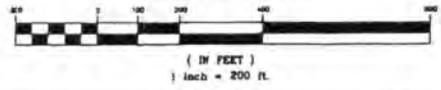
THIS SURVEY DOES NOT REPRESENT A CURRENT FIELD SURVEY

REFERENCE PLATS:
PLAT BY CHARLES C. TOWNES & ASSOCIATES ENTITLED "PLAT OF 96.40 ACRES OF LAND ON STATE ROUTE #626 FOR WALTER E. ARCHER, JR. AND LARRY E. ARCHER" DATED JUNE 27, 1978, LAST REVISED OCTOBER 8, 1979

PLAT BY CHARLES C. TOWNES & ASSOCIATES, P.C. ENTITLED "PLAT OF 33.98 ACRES OF LAND SITUATED ON THWEATT DRIVE STATE ROUTE #626 7101 THWEATT DRIVE FOR WALTER E. ARCHER & VIRGINIA K. ARCHER" DATED MARCH 8, 1988, LAST REVISED APRIL 17, 1989

PLAT BY TOWNES SITE ENGINEERING ENTITLED "COMPILED PLAT OF 2 EASEMENT AREAS SITUATED OFF OF THWEATT DRIVE - STATE ROUTE #626" DATED MARCH 27, 2008

GRAPHIC SCALE



CWA-03-2008-0382 DW

Exhibit C