



Robert Dunn, Chair  
Virginia State Water Control Board  
Office of Regulatory Affairs  
Department of Environmental Quality  
P.O. Box 1105  
Richmond, Virginia 23218

Subject: Order by Consent Issued to Virginia True Corporation for  
Virginia True Golf Course

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Dear Mr. Dunn,

Sometimes a picture is worth a thousand words, but sometimes we need those words to extend the frame of the cropped image, extend the timeline of the snapshot, and give context and relevance to what we can see. This is particularly true with the violations at the Virginia True property on Fones Cliffs in Richmond County. In this instance, it is necessary to step back to fully understand the severity of the violation, its threat to the health of the Rappahannock River, and to see why the civil charges and action items stated in the consent order posted for public notice on July 3, 2018 are inadequate.

The purpose of the consent order is to resolve certain violations of the State Water Control Law and the applicable permit and regulations. Friends of the Rappahannock (FOR) have direct experience with both Virginia True and its proposed Golf Course and Spa and offers comments to the SWCB for its consideration.

FOR was formed in 1985 as a non-profit, grassroots conservation organization. Our mission is to be the voice and active force for a healthy and scenic Rappahannock River. We frequently work with local governments on issues pertaining to watershed advocacy, restoration and education and have been engaged with Richmond County, property owners and developers and state agencies regarding development along Fones Cliffs for more than 5 years.

Following the approval of re-zoning for this development, FOR and its partners began to raise concerns regarding the potential for erosion at Fones Cliffs. On February 5, 2016, FOR staff and other partners met with DEQ Director, David Paylor, to outline our concerns to DEQ. We have continued our communication with DEQ throughout the compliance and enforcement efforts for the violations associated with the consent order.

FOR's comments provide context and relevance of the violations of State law by connecting these illegal actions to the environmental damage and ongoing threats to the water quality of the Rappahannock River, its wetlands and its tributaries. To do this, we want to:

1. Expand the frame of reference provided by the consent order to include documentation of violations both before and after those stipulated in the Findings of Fact and Conclusions of Law in the order, and
2. Expand the boundaries of the problem beyond the silt fence at the perimeter of the cleared areas to include the cliff face along the Rappahannock River.

This larger view of the problem in both geographic scope and time will highlight the severity of the violation and its importance to the health of the watershed.

**An Expanded Frame of Reference:**

Virginia True Corporation began illegally clearing land at its proposed golf resort on top of Fones Cliffs (Tax Map 4 Parcel 1) during the fall of 2017. **Exhibit 1** presents satellite imagery dated October 20, 2017 where 4.25 acres have already been cleared. FOR became aware of activity in mid-November. At that time FOR Tidal River Steward, Richard Moncure, alerted Richmond County officials of land disturbance issue near the edge of Fones Cliffs.



**Exhibit 1: Google Earth satellite image of Virginia True property showing 4.25 acres of land illegally cleared before October 20, 2017.**

Clear-cutting and burning continued on the Virginia True property until Richmond County issued a Stop Work Order on Nov. 30, 2017. When Richard English (Richmond County Compliance Officer) conducted a full Erosion and Sediment Control inspection on December 1, 2017, he mapped out 13.4 acres of land disturbance without any erosion and sediment control practices in place. **Exhibit 2** presents documentation of the extent of the illegal clearing in an email Richard English (Richmond County Compliance Officer) sent to County Administrator, Morgan Quicke, on December 1, 2017. The referenced map was included in the December 1, 2017 inspection report prepared by Mr. English.

## R. Morgan Quicke

**From:** T. Richard English, Jr.  
**Sent:** Friday, December 01, 2017 2:25 PM  
**To:** R. Morgan Quicke  
**Subject:** Cleared Area

I went to the site and walked the entire perimeter of what had been cleared. I mapped it with our GIS unit. Here is a map. I've calculated 13.4 acres have been cleared. A few places may be in the RPA. We can review this more later.

Exhibit 2: Email from Richard

English (Richmond County Compliance Officer) to Morgan Quicke County Administrator regarding the extent of the land disturbance activity on the Virginia True property (December 1, 2017)

FOR's efforts from mid-November through today (nine months) have been focused on:

- Rapid correction of the inadequately-managed stormwater drainage on the cleared acreage, and
- Full compliance with all local and state requirements for the development by Virginia True.

These are not unreasonable requests of any legitimate developer. These actions are not difficult to accomplish. They are not even uncommon. They are the standard and expected practice for development across the State where other developers, businesses and citizens are expected to live up to these same State laws and local requirements.

The Virginia Department of Environmental Quality (DEQ) first inspected the property on December 18, 2017. None of the inspections made by DEQ between December 18, 2017 and April 11, 2018 (the most recent DEQ inspection report cited in the order) have indicated compliance. While Virginia True has inched its way towards compliance, the corporation has not been able to achieve full stabilization of the illegally cleared area, nor effectively control stormwater runoff to the Rappahannock River during that period of time.

More problematic is the fact that subsequent DEQ inspections in May, June and July have continued to indicate incomplete site stabilization, failure to maintain stormwater best management practices (BMPs), and non-compliant record keeping. Also on May 21 and June 2 two large slides occurred on Fones Cliffs directly adjacent to the 13.4 acres of cleared land. **Exhibits 3 and 4** show drone footage of the cliffs following these events. **Exhibits 5, 6 and 7** show photographs from DEQ inspection reports from May 8, June 8, and July 13 that show evidence of runoff leaving the cleared area on Virginia True's property and flowing over the cliff edge and continued failure to adequately stabilize the site.



Exhibit 3: Drone footage of Virginia True Property taken on

May 24, 2018 by FOR volunteer (H. Chandler III) following landslide of cliff face on May 21, 2018. Note the FOR Carolina Skif (21 ft) below the cliff face.



Exhibit 4: Drone footage taken June 4, 2018 (H. Chandler III)

following second landslide at cliff on June 2, 2018. Note additional soil loss at the site and stream of sediment moving from the toe of the cliff into the Rappahannock River.



Exhibit 5: Photo (Figure 8) from May 8, 2018 DEQ inspection report

showing sediment escaped from the silt fence and deposited downstream of the property toward the cliff edge and the river.



Exhibit 6: Photo (Figure 5) from June 8, 2018 DEQ inspection report

showing erosion occurring next to a level spreader depositing sediment downstream. The silt fence is down and not providing adequate erosion & sediment perimeter control. . Note this photo looking in towards the cleared area.



Exhibit 7: Photo (Figure 6) of the July 13, 2018 DEQ inspection report of Virginia True property. Note the inadequate soil stabilization on a steep slope at edge of cleared area (more than 7 months after the Stop Work Order issued by Richmond County.)

### What These Violations Mean for the Rappahannock River

Currently, a Virginia Stormwater Management Program (VSMP) construction permit has finally been issued. Unfortunately, the VSMP permit was issued nearly ten months after the land disturbance began, instead of before land disturbance. A similar disregard for local requirements was shown in Richmond County where none of the planning, zoning and erosion control programs were secured prior to land disturbance. **Exhibit 8** illustrates the entire Virginia True parcel, the land illegally cleared in fall 2017, and the only area considered in an incomplete Phase II zoning application submitted concurrent to the land disturbance.

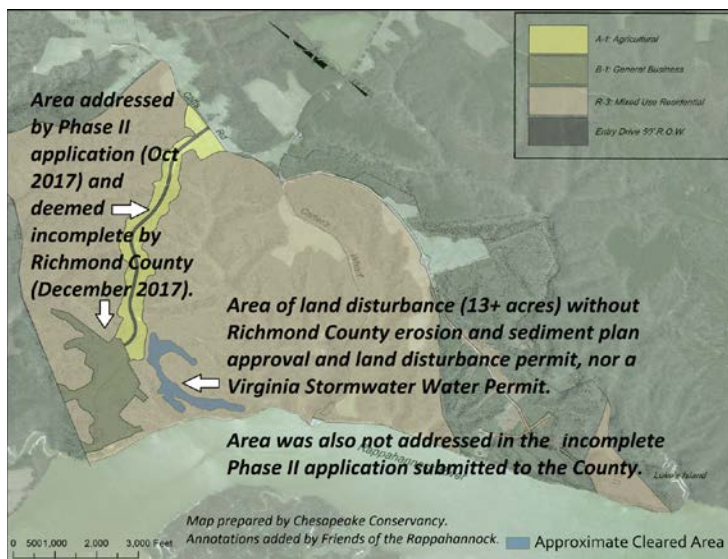


Exhibit 8: Map of Virginia True property. Note blue area is the 13.4 acres illegally cleared in fall 2017. Also, the cliff faces, as well as ravines near the cleared area are frequently a 1:1 slope.

Please remember, in concept plan documents, and presentations at public meetings before the Richmond County Planning Commission and the Board of Supervisors, Virginia True has consistently proposed an unobstructed view of the Rappahannock River. **Exhibit 9:** shows a concept plan for the development with few to no trees at the cliff edge for the proposed golf course and the lodge site. It is no accident that the 13.4 acres were cleared nearly to the cliff edge. It has been part of the design concept all along.

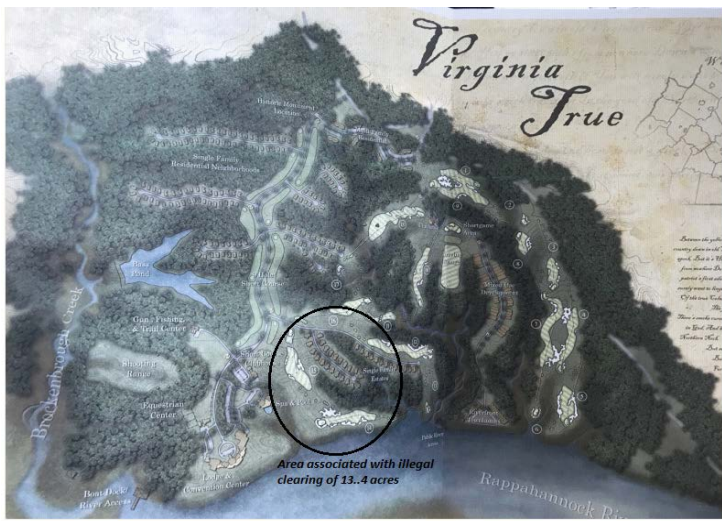


Exhibit 9: Virginia True concept plan (c. 2016) with annotation

indicating area cleared in fall 2017. Note plan envisions a treeless cliff edge for the lodge and several of the golf holes.

### Insufficient Civil Charges and Action Items Included in the Consent Order

The current order includes civil charges of \$42,000 and a list of action items that are perfunctory at best. It is neither punitive nor restorative.

- It does not reflect the financial benefit that Virginia True achieved by moving forward with land disturbance activities prior to appropriate permits and approval
- It does not restore the land that was been cleared of mature tree cover or a river that has received tons of sediment from the cliff slide and runoff from the site.

In defiance of State Water Control Law and local ordinances, Virginia True moved forward without approval and permits, used uncertified land disturbance contractors, and inadequately installed and maintained effective erosion and stormwater controls.

All the costs associated with engineering design, installation and maintenance of erosion and stormwater controls, including maintaining a fully stabilized site and self-inspection reporting are normal costs associated with development activities. There is nothing additional included in the action items that suggests an additional level of scrutiny due to the severe disregard for the law. The only additional cost is the \$42,000 penalty and that seems like Virginia True would consider that a bargain to pay for a clear view from hole #14 of their golf course.

However, please remember:

- This is not an approved golf course, lodge, spa, equestrian center, nor a housing development.
- This is a piece of property owned by a development company that has proposed only Phase I of a development plan.
- They have received rezoning approval for the property from Richmond County but there are many more steps to take, ordinances and state laws to follow, proffers to honor, and approvals to be granted at a county and state level before land disturbance can continue for the construction of the features and amenities of the Virginia True Golf Course and Spa.
- This is not hole #14 of a planned golf course, but it was a forest, it was habitat, and it was riparian buffer before it was illegally cleared, and
- This violation is for 13.4 acres of unpermitted land disturbance.

The consent order defines 'construction activity' as "any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre. The order does not link all of the Findings of Fact and Conclusions of Law to anything more than 'construction activity' at the site.

### **A Proposal for Revised Civil Charges and Action Items**

Virginia True placed itself outside the regulatory structure of the Virginia Water Control Law. The actions of the SWCB will bring them back inside that regulatory structure with respect to the violations, but hopefully for all future activates by this corporation. As a state we ask all developers to adhere to these laws and protect the health and vitality of State waters and to establish a level playing field for development across the state. Our citizens and legislators don't want people to come to Virginia with the expectation that Virginia is a place where a developer can short circuit environmental regulation to benefit their corporation at the expense of the State's natural resources.

Friends of the Rappahannock recommend the following revisions to the consent order Virginia True.

1. Make Virginia True replant trees on the 13.4 acres that were cleared. They have been unsuccessful in stabilizing the site with grass. They need to have permanent stabilization in place because there are no plans to develop this 13.4 acres within the next year (as as you'll recall there are no approved plans at all). Trees will help restore the riparian buffer at the cliff edge and along the ravines in the upland portion of the cleared land. This will hopefully reduce erosion on the site and run off from the property.
2. Assess a higher civil charge. **Exhibit 10** presents a table with a proposed fine appropriate to the extent of the violations (duration of non-compliance and acreage involved). FOR proposes that civil charge be divided as follows:
  - Virginia Stormwater Management Fund - \$209,657
  - Virginia Water Protection Program - \$500,000 to complete a Supplemental Environmental Project (SEP) in the Rappahannock River watershed that focused on sediment load reduction through improved riparian buffers, installation of voluntary urban or agricultural stormwater best management practices, and/or stream restoration projects.
3. Calculate additional civil charges for the time out of compliance after April 11, 2018. At the SWCB meeting where this consent order is review, FOR requests that the Board consider assessing additional civil charges at \$355.22/ day / disturbed acres for each day of non-compliance. If compliance has not been obtained by the time SWCB meets, FOR requests that the Board set additional dates to review compliance and assess additional civil charges. And additional charges collected from Virginia True should be allocated at 30% to the Virginia Stormwater Management Fund and 70% to an approved Supplemental Environmental Project.

<b>Comparison of Civil Charges: Consent Order v. Alternative and Additional Charges</b>					
<b>Consideration</b>	<b>Dates</b>	<b>Days</b>	<b>Acreage</b>	<b>Civil Charge / day / acre</b>	<b>Total Civil Charge</b>
<b>Consent Order Fine</b>					
<b>Consent Order</b>	<b>Dec 18 2017 – April 11 2018</b>	<b>115 days</b>	<b>1 acre</b>	<b>\$365.22</b>	<b>\$42,000</b>
<p>\$365.22 was calculated by dividing \$42,000 by 115 days between the 1<sup>st</sup> (December 18, 2017) and most recent (April 11, 2018) DEQ inspections mentioned in the consent order. There is no mention of the amount of land disturbed (13.4 acres) in the consent order,. FOR associated the civil charge of \$42,000 to the definition of construction activity as the exceedance of 'more than 1 acre' of disturbed land. The \$365.22 civil charge / day / acre is used for all calculations in the proposed alternative.</p>					
<b>Proposed Alternative and Additional Civil Charges</b>					
Additional acreage	Dec 18 2017 – April 11 2018	115 days	13.4 acres	\$365.22	\$562,800
Additional days from ESC inspection documenting 13.4 acres to 1 <sup>st</sup> DEQ inspection	Dec 1 2017 – Dec 17 2017	17 days	13.4 acres	\$365.22	\$83,197
Additional days and additional acreage for clearing begun in October	Oct 20 2017 – Nov 30 2017	41 days	4.25 acres	\$365.22	\$63,640
<b>Total of proposal alternate and additional fine</b>	<b>Oct 20 2018 – April 11 2018</b>	<b>173 days total</b>	<b>4.25 - 13.4 acres</b>	<b>\$355.22</b>	<b>\$709,637</b>

Exhibit 10: Table comparing civil charges included in the consent order and FOR proposed alternatives and additional charges.

### Conclusion

The geological feature of Fones Cliffs in Richmond County has been documented across the centuries for its cultural and ecological value. It is not coincidental that it sits at the vibrant and bountiful reach of the river, across a highly productive marsh system. The cliffs, the marsh and the river are all part of one ecosystem that has survived across



centuries, provided food for humans and animals across centuries, and provides a rich cultural heritage and natural resource for our future.

Care must be taken with any development. At a minimum they must obey the laws established to protect these resources. When the development is of considerable size extra attention must be made by both the developer and all overseeing organizations to ensure:

1. Compliance with applicable environmental laws
2. Proffers and agreements are honored
3. Extra care is taken to protect erodible soils, fragile ecosystems, and our waterways.

Friends of the Rappahannock urge the Board to consider:

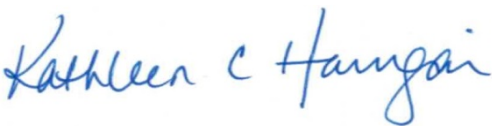
- When the violation first started (at least two months before the 1<sup>st</sup> DEQ inspection mentioned in the consent order),
- The length of time Virginia True took to stabilize the site and how ineffective those efforts were (noncompliance continues 4 months after the most recent DEQ inspection mentioned in the consent order), and
- The tons of excess sediment now in the Rappahannock River.

The current civil charges and action items are insufficient to address the non-compliance at the Virginia True property on Fones Cliffs.

FOR has worked with the County, State and land owner throughout this process and plans on continuing those relationships going for to continually voice the need for protection of our water resources concerning large-scale development on Fones Cliffs.

Please contact me if you have any additional questions. FOR staff are ready to meet with the Board or DEQ personnel to provide additional information. This includes support to any member of the board who would like transport by boat to the see the cliffs, or an opportunity to view additional videos or photographs taken by FOR staff and volunteers from the river, drones or airplanes over the cliffs.

Sincerely,



Kathleen C Harrigan  
Executive Director, Friends of the Rappahannock



Chris Muldrow  
Chair, Executive Committee Friends of the Rappahannock

cc:

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