

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Eagle Bay Property Owners) **Order No. 2024-WPCB-1922**
 Association, Inc.)
)
 Proceeding under the)
 Missouri Clean Water Law)

NOTICE AND ORDER TO ABATE VIOLATIONS

CERTIFIED MAIL # 7012 2920 0002 0662 7745
RETURN RECEIPT REQUESTED

TO: Eagle Bay Property Owners Association Board of Trustees
Eagle Bay Property Owners Association, Inc.
28451 Northwoods Drive
Lincoln, MO 65338

You are hereby notified that on this date the Missouri Department of Natural Resources has issued this Notice and Order to Abate Violations to the Eagle Bay Property Owners Association, Inc., under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically Sections 644.056 and 644.079 RSMo. Eagle Bay Property Owners Association, Inc. may be referred to as the Respondent for purposes of this Order. The Missouri Department of Natural Resources may be referred to as the Department for the purposes of this Order.

Failure to comply with this Order is, by itself, a violation of the MCWL under Section 644.076 RSMo. Continued non-compliance may result in the Department pursuing legal action for injunctive relief, additional penalties of up to \$10,000 per day for each day or part thereof of noncompliance, a surcharge of 15 percent of the penalty described herein, 10 percent interest on

any amounts owed, attorney fees and costs, and/or any other remedy authorized by law, including but not limited to Sections 644.056, 644.076, 644.079, and/or 644.096 RSMo.

FINDINGS OF FACT

1. The Respondent is a not-for-profit corporation registered and in good standing with the Missouri Secretary of State.

2. The Respondent owns properties and operates community amenities on common ground within the Eagle Bay Subdivision (Subdivision) located at 28451 Northwoods Drive, Lincoln, in Benton County. The Subdivision's method of wastewater treatment and disposal has not been approved by the Department. The Subdivision is approximately 521 acres in size and consists of approximately 1,468 recreational-use and residential-use lots. Stormwater runoff from the Subdivision drains to Flat Rock Creek and an unnamed tributary to Brickley Hollow, both class C gaining streams. The Subdivision does not have a wastewater treatment facility and is therefore unpermitted, meaning it does not currently operate subject to the conditions and requirements of a Missouri State Operating Permit.

3. Flat Rock Creek and Brickley Hollow, and their tributaries, are waters of the State as the term is defined by Section 644.016(31), RSMo.

4. Domestic wastewater is a water contaminant, as the term is defined by Section 644.016(28), RSMo.

5. The definitions in the MCWL and its implementing regulations, specifically Section 644.016, RSMo, 10 CSR 20-2.010, and 10 CSR 20-6.030(1)(A) apply to this Order and are hereby incorporated by reference into this Order.

6. Lots offered for sale or lease as part of a common promotional plan must have written approval from the Department for the method of sewage treatment and disposal to be

used in the development prior to the sale, lease, or the commencement of construction on any lot by the developer or any person, as established in 10 CSR 20-6.030(1)(D) and 10 CSR 20-6.030(7)(B).

7. For residential housing developments with lots of less than 40,000 square feet (0.92 acres), only centralized sewage collection and treatment are acceptable for the development, pursuant to 10 CSR 20-6.030(1)(D)1.

8. On October 24, 2022, Department staff conducted an investigation at the Subdivision in response to receiving a series of environmental concerns alleging improper management of wastewater and illegal dumping and discharging of wastewater onto the ground within the Subdivision. Department staff met with a representative of the Respondent, who accompanied staff on the investigation. During the investigation, staff observed the two wastewater dump stations in the Subdivision. Neither dump station is approved by the Department. Department staff observed one dump station was available for use at the time of the investigation, and the other dump station was out of service at the time of the investigation. Department staff did not make any observations of wastewater handling on individual lots during the investigation but did observe Flat Rock Creek in three separate locations. Flat Rock Creek was dry at the time of the inspection. Department staff did not observe any wastewater impacts to the creek.

9. On December 16, 2022, Department staff met with representatives of the Respondent to discuss the Residential Housing Development (RHD) Rule, 10 CSR 20-6.030, and wastewater handling requirements within the Subdivision. Department staff informed the representatives of the Respondent that the Subdivision is subject to the RHD Rule and in violation of the RHD Rule.

10. On August 9, 2023, the Department sent a letter to the Respondent reiterating to the Respondent the violations of the MCWL occurring within the Subdivision, options to resolve the violations, and formally notifying the Respondent that all sales of lots within the Subdivision, all rentals of lots, and any installation of wastewater or drinking water utilities on individual lots within the Subdivision must stop until the non-compliance has been resolved.

11. On November 9, 2023, the Department sent a letter to the Respondent informing the Respondent that continued lot sales by developers who are buying and selling lots within the Subdivision is a violation of the MCWL and all developers must obtain written approval for the method of wastewater handling, treatment, and disposal for the lots the developer intends to sell prior to the sale, lease, or start of construction on any lot within the Subdivision. The letter advised the Respondent that developers must work with the Respondent to submit their proposals to the Department for review and approval.

12. On December 21, 2023, the Department issued Referral Notice of Violation (RNOV) No. KCWP23017 to the Respondent based on the violations documented by Department staff as a result of the October 24, 2022, investigation and subsequent information obtained from the December 16, 2022, meeting and publicly available information. The RNOV informed the Respondent that the violations of the MCWL occurring within the Subdivision had been referred to the Department's Compliance and Enforcement Section.

13. On April 25, 2024, the Department met with the Respondent to discuss the necessary actions the Respondent must take to resolve the violations of the MCWL and the enforcement action.

14. As of the date of this Order, the Respondent has: failed to retain a professional engineer licensed in the State of Missouri; failed to submit a proposal to the Department for the

method of wastewater handling, treatment, and disposal to serve the wastewater needs of the Subdivision; and failed to effectively cease the sales of lots within the Subdivision. The failure to resolve these violations in a timely manner has perpetuated the continued threat to human health and the environment caused by the lack of proper management of wastewater within the Subdivision.

15. Since at least October 24, 2022, Department staff have offered the Respondent several opportunities to meet to discuss corrective actions to resolve the violations of the MCWL occurring in the Subdivision. Department staff have also sent the Respondent several written correspondences explaining the violations and the steps necessary to correct the violations and achieve compliance with the MCWL and its implementing regulations. As of the date of this Order, the Respondent has failed to take the necessary steps required to bring the Subdivision into compliance with the MCWL and its implementing regulations.

16. This Order is necessary to compel compliance and to prevent or eliminate threats to human health or the environment.

STATEMENT OF VIOLATIONS

The Respondent has violated the MCWL and its implementing regulations as follows:

17. Failed to obtain approval from the Department for the method of sewage treatment and disposal to be used in the development prior to the sale or lease of any lot or the commencement of construction on any lot by the developer or any person, in violation of Section 644.076.1, RSMo and 10 CSR 20-6.030(1)(D) and 10 CSR 20-6.030(7)(B);

18. Failed to use centralized sewage collection and treatment for lots less than 40,000 square feet (0.92 acres), in violations of Section 644.076.1, RSMo and 10 CSR 20-6.030(1)(D)1; and

19. Placed or caused or permitted to be placed a water contaminant, domestic wastewater, in a location where it is reasonably certain to cause pollution of Flat Rock Creek and an unnamed tributary to Brickley Hollow, waters of the State, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

CORRECTIVE ACTIONS

Pursuant to Section 644.056 RSMo, the Department hereby orders the Respondent to complete each of the following corrective actions:

20. Immediately upon the effective date of this Order, the Respondent shall not sell, offer for sale or lease, or commence construction on any lot within the Subdivision until the Department approves the method of wastewater handling, treatment, and disposal for the entire Subdivision and a permanent, approved method for wastewater handling, treatment, and disposal for the entire Subdivision is constructed and completed.

21. In the period of time from the effective date of this Order until the Subdivision has received written approval from the Department and has completed construction of an approved wastewater handling, treatment, and disposal system, the Respondent shall take any and all necessary actions to ensure wastewater vessels (i.e. holding tanks, onsite septic systems, pits, basins, or other similar containment vessels) within the Subdivision are not illegally drained or dumped and that they are properly maintained to prevent wastewater discharges to the environment, even if this means implementing daily pumping and hauling requirements, or replacement of compromised vessels, or elimination of vessels.

22. Immediately upon the effective date of this Order, the Respondent shall implement pumping and hauling of wastewater, as necessary, from all holding tanks or similar containment vessels within the Subdivision to prevent any overflows or discharges of

wastewater. The Respondent shall maintain a pumping log showing the day, lot number or address, gallons pumped, and name of the permitted wastewater treatment facility accepting the wastewater for treatment and disposal. The Respondent shall submit quarterly copies of the pumping log to the Department, as indicated in Paragraph 33 of this Order, by the 28th day of the month following each quarter with the first pumping log being submitted by the 28th day of the month following the first quarter after the effective date of this Order. If no pumping occurred within the quarter, the Respondent is not required to submit a pumping log, but shall submit in writing to the Department, as indicated in Paragraph 33 of this Order, by the 28th day of the month following each quarter an explanation of why no pumping occurred within the quarter and how wastewater within the Subdivision is being properly managed.

23. Within 90 days of the effective date of this Order, the Respondent shall retain a professional engineer licensed in the State of Missouri to evaluate the Subdivision in its entirety for a method of wastewater handling, treatment, and disposal best suited for the serving the wastewater needs of all lots within the Subdivision. The engineer shall develop a proposal for submission to the Department for review and approval that recommends the proposed method of wastewater handling, treatment, and disposal to serve the Subdivision's wastewater needs. The proposal shall include at a minimum:

- a. A draft contract with lot buyers to tie the lot restrictions to the lot deeds;
- b. A draft agreement with the Respondent to ensure the lot use restrictions are properly recorded in the Respondent's office records;
- c. If applicable, a draft agreement with the Respondent that specifies lot owners of lots restricted to primitive camping only will be granted access to use common ground features such as, but not limited to, a comfort

station, restrooms, shower house, potable water, and waste and wastewater disposal amenities;

d. If applicable, lots intended for building, extended stay/seasonal (i.e. longer than a weekend), or permanent residence must have an approvable, permanent means of wastewater handling, treatment, and disposal to serve the lot usage; and

e. A narrative summary of the intention for the lots within the Subdivision. The narrative must include, at a minimum:

i. Specify lots owned by individuals and lots owned by developers, and the location of those lots separated by each individual and each developer within the Subdivision. A plat map with the lots separated by color coding is ideal;

ii. Specify the lot sizes;

iii. Specify the lot's proximity to potable water;

iv. Specify any existing features on the lot, if any (e.g. water well/spigot, holding tank, onsite septic subsurface disposal system, concrete pad, buildings/structures, etc.). If there are no existing features on the lot, specify "no existing features on this lot";

v. Specify the existing use for existing individually owned lots, or the proposed use for the lots upon sale (i.e. will the lots be sold as building lots, permanent living, seasonal living, primitive camping only, seasonal/recreational use only (i.e. weekend use), etc.); and

- vi. A detailed discussion of at least three alternative options for a permanent means of wastewater handling, treatment, and disposal to serve the wastewater needs of the entire Subdivision.

24. Within 180 days of retaining an engineer, the Respondent, or the engineer on the Respondent's behalf, shall submit to the Department for review and approval the proposal for the method of wastewater handling, treatment, and disposal.

25. Upon the Department's approval of the method of wastewater handling, treatment, and disposal, the engineer shall develop a Facility Plan in accordance with 10 CSR 20-8.110 that recommends improvements necessary to enable the Subdivision to comply with the method of wastewater handling, treatment, and disposal approved by the Department. The Facility Plan shall include a comprehensive improvements schedule for the recommended improvements.

26. If the use of holding tanks in the Subdivision is part of the Department's approved method of wastewater handling, treatment, and disposal for the Subdivision, the Respondent shall also utilize the engineer to develop a Holding Tank Management Plan for the Subdivision to address the long-term handling and treatment of wastewater generated within the Subdivision. The Holding Tank Management Plan, if required, shall be submitted to the Department for review and approval at the same time as the Facility Plan. The Holding Tank Management Plan shall adhere to the Department's approved method of wastewater handling, treatment, and disposal, and shall include, but is not limited to:

- a. An ongoing inventory of all holding tanks within the Subdivision, including, at minimum, the tank's location (lot and block number/address), type of lot (e.g. camping, seasonal, permanent residential), name and

contact information of lot owner, type of tank (holding or onsite septic system), date of installation, installation permit number, tank material, tank capacity, and if the tank has a high water alarm and telemetry equipped;

- b. A holding tank and onsite treatment system assessment and replacement schedule to evaluate the structural integrity of each existing installed holding tank and onsite treatment system to determine if the holding tank or onsite treatment system is compromised in any way which may lead to leaking or otherwise failure of the holding tank or onsite treatment system. The schedule should prioritize and include a set deadline for the replacement of any holding tanks or onsite treatment systems found to be compromised or structurally unsound or otherwise not meeting the minimum standards of the Benton County Health Department for holding tanks and onsite treatment systems;
- c. A holding tank and onsite treatment system routine pumping schedule, established by the engineer, for each holding tank and onsite treatment system in the Subdivision to ensure frequent enough pumping intervals to prevent wastewater overflows from the holding tanks or onsite treatment systems; and
- d. Established and implemented controls enforceable by the Respondent through the Subdivision's bylaws and restrictive covenants to ensure proper routine holding tank and onsite treatment system maintenance, such as routine inspections, limits on tank loading, tank size minimums based

on use per year, and standard operating procedures for tank installation approvals.

27. Within 90 days of the Department's approval of the method of wastewater handling, treatment, and disposal for the Subdivision, the Respondent, or the engineer on the Respondent's behalf, shall submit to the Department for review and approval the Facility Plan and, if applicable, the Holding Tank Management Plan.

28. If applicable, upon the Department's approval of the Holding Tank Management Plan, the Respondent shall immediately begin the implementation of the Holding Tank Management Plan and management schedule(s) contained therein, which shall be incorporated herein as an enforceable condition of this Order. The Respondent shall also immediately take all necessary steps, including the revision or updating of the Subdivision's bylaws and restrictive covenants, to ensure continuity and compliance with the Holding Tank Management Plan, and prevent deviation from the Holding Tank Management Plan.

29. Upon the Department's approval of the Facility Plan, the Respondent shall implement the Facility Plan's improvements schedule, which shall be incorporated herein as an enforceable condition of this Order.

30. Upon the Department's approval of the Facility Plan, the Respondent shall consult with the Department's Engineering Section staff and comply with all applicable application, permit, and permit fee requirements as set forth in 10 CSR 20-6 Permits and 10 CSR 20-8 Minimum Design Standards.

31. Within 60 days of completing construction of the improvements specified in the improvements schedule, the Respondent, or the engineer on the Respondent's behalf, shall submit to the Department a Statement of Work Completed Form, signed, sealed, and dated by a

professional engineer licensed in the State of Missouri certifying that the project is complete and operable in accordance with Department-approved plans and specifications.

32. This Order will be considered satisfied and shall terminate upon the Department's determination that the Respondent has achieved compliance with the MCWL and regulations.

SUBMISSIONS

33. All other documentation submitted to the Department for compliance with this Order shall be submitted within the timeframes specified to cwenf@dnr.mo.gov or:

Erin Heidolph
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, MO 65102-0176

OTHER PROVISIONS

34. Any request for an extension of time or to otherwise modify this Order may be considered on a case-by-case basis, if the Respondent makes a written request to the Department within 10 business days of receipt of this Order, and otherwise provides appropriate justification and/or documentation to the Department in a timely manner. Any modification of this Order shall be in writing.

35. Compliance with this Order resolves only the specific violations described herein, and this Order shall not be construed as a waiver or modification or any other requirements of the MCWL and regulations, or any other source of law. Nor does this Order resolve any future violations of this Order or any law or regulation. Consistent with 10 CSR 20-3.010(5), this Order shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

36. This Order shall apply to and be binding upon the Respondent and any of their agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for the Respondent. Any changes in ownership or corporate status, including but not limited to, any transfer of assets or real or personal property, shall not relieve the Respondent of their obligation to comply with this Order.

37. For any plan or submittal from the Respondent that is required by this Order and subject to Department approval under this Order, the Department may approve, disapprove, require revisions, or otherwise modify any such plan or submittal. Any such Department decision shall be conveyed in writing to the Respondent. Disapproval may result in further orders or pursuit of other forms of relief by the Department. If the Department requires revisions, the Respondent shall submit a revised version of the plan or submittal within 10 business days after receiving notice of the Department's required revisions, or within such other timeframe as the Department may specify. If the Department approves or modifies in writing such plan or submittal, it shall become enforceable under this Order, and the Respondent shall commence work and implement such approved or modified plan in accordance with the schedule and provisions contained therein.

NOTICE OF APPEAL RIGHTS

38. If you were adversely affected by this decision, you may be entitled to pursue an appeal before the Administrative Hearing Commission (AHC) pursuant to 10 CSR 20-1.020 and Sections 644.056, 644.079, 640.013, and 621.250, RSMo. To appeal, you must file of a petition with the AHC within 30 days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will

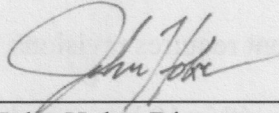
be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Any appeal should be directed to:

Administrative Hearing Commission
U.S. Post Office Building, Third Floor
131 West High Street, P.O. Box 1557
Jefferson City, MO 65102-1557
Phone: 573-751-2422
Fax: 573-751-5018
Website: <https://ahc.mo.gov>

SIGNATURE AUTHORITY

SO ORDERED on this 29th day of October, 2024 by:

DEPARTMENT OF NATURAL RESOURCES



John Hoke, Director
Water Protection Program

- c: Mike Carroll, Director, Kansas City Regional Office
- Timothy Duggan, Missouri Attorney General's Office
- General Counsel's Office
- Accounting Program