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## Construction/Stormwater Enforcement: Arkansas Department of Energy & Environment - Division of Environmental Quality and Garland County Property Owner Enter into Consent Administrative Order

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The Arkansas Department of Energy & Environment – Division of Environmental Quality (“DEQ”) and Omni Home Builders at Diamondhead Resort Community, LLC (“Omni”) entered into a may 24th Consent Administrative Order (“CAO”) addressing alleged violations of a Stormwater Construction General Permit. See LIS No. 22-059.

The CAO provides that Omni is the owner of real property (“Property”) located in the Diamondhead Resort Community (“Community”) in Hot Springs and Garland Counties, Arkansas.

Omni is stated to have purchased the Property in 2018 from one of the several successors of the original owner and developer of the Community. The original owner and developer are stated to have created a common plan of development for the Property including platting the Property. Further, after an initial period of development, it is stated the Property lay fallow and development was not pursued under a common plan for decades.

Omni’s purchase of the Property is stated to have been after many years without a common plan of development. However, Omni is stated to have sold “a few lots” to individual builders as those lots were originally platted. In addition, Omni is stated to be in the process of developing a common plan of development for the Property. Maximization of the value of the purchase of the Property has been sought by selective-cut harvesting timber in discrete locations of Hot Springs County.

Construction activities on the Property if undertaken as part of a common plan of development are stated to fall within the definition of a “Large Construction Site” in accordance with Arkansas Pollution Control & Ecology Commission (“APC&EC”) Rule 6.103 and Part I, Section A of the Stormwater Construction General Permit.

The CAO further provides that at the time in which the construction activities began on the Property they had the potential to discharge stormwater associated with construction activity to unnamed tributaries eventually flowing to the Ouachita River. Such activities are stated to be regulated pursuant to the

National Pollutant Discharge Elimination System (“NPDES”) once construction under a common plan of development occurs.

DEQ is stated to have issued Stormwater Construction General Permit ARR150000 (“Permit”) in 2016. The Permit was reissued on November 1, 2021.

A Reconnaissance Inspection of the site was undertaken by DEQ on December 12, 2019, in response to a complaint. The inspection report is stated to have indicated that Omni was in violation of APC&EC Rule 6.203 for failing to obtain coverage under the Permit.

Omni responded to a DEQ query regarding the alleged violations on January 7, 2020. It stated that construction and development activities were not being conducted. As a result, a Permit was stated by Omni not to be required as timber harvest activities was the only ongoing activity.

DEQ is stated to have conducted an additional Reconnaissance Inspection on January 15, 2020, which indicated the same findings. Further, DEQ is stated to have received a complaint concerning erosion and runoff at the site on February 10, 2020.

Omni at the request of DEQ submitted a Notice of Intent (“NOI”) for coverage under the Permit along with an Erosion Control Plan and Stormwater Pollution Prevention Plan (“SWPPP”).

DEQ received an additional public complaint on February 20, 2020, concerning erosion and runoff.

Construction stormwater inspections were conducted by DEQ on April 8, 2020, and April 23, 2020, of the site in response to public complaints. The inspection report is stated to have indicated the following violations:

- Failure to properly operate and maintain the site as required by the Permit
- Observation of evidence that in-stream activities have occurred and that equipment used for timber harvesting had entered waters of the state

Omni submitted a response to this inspection stating that all items discussed were timber harvesting activities.

DEQ conducted an additional inspection of the site on July 13, 2020, and identified the following alleged violations:

- Failure to properly operate and maintain the site as required by the Permit
- Sediment and debris from the construction areas migrated into drainage along Plum Hollow Blvd. and Independence Drive
- Site maps do not provide sufficient detail of areas of construction and activity at the site

Omni responded to the DEQ inspection report again stating that all items identified were timber harvesting activities. DEQ stated that the inspection response was inadequate and requested additional information. The CAO indicates that DEQ did not receive a response.

The CAO provides that silvicultural activities, including harvesting operations for production of forest products, are specifically exempt under Section 4040(f)(1) of the Clean Water Act. As a result, Omni is stated to have asserted that it was conducting timber harvesting activities in areas that were plotted under a common plan of development and that development in those areas of the Property had ceased for several decades.

The CAO requires that Omni comply with the terms and conditions of the Notice of Coverage and the associated NPDES Stormwater Construction General Permit for construction activities on the Property. Further, it is required to obtain a Short Term Activity Authorization from DEQ before performing any in-stream activities.

Omni is required to immediately implement best management practices for any construction activities and comply with all other terms and conditions of the Permit. Within 30 calendar days of the effective

date of the CAO Omni is required to submit to DEQ a revised SWPPP to include sufficiently detailed site maps to identify the entire scope of the complete larger plan of common development, to the extent such plan exists and is not conceptual in nature, and current activity sites within that area(s) for which a finalized common plan of development exists in accordance with Part II, Section A.4.F of the Permit. The site maps are required to contain additional information as specified in the CAO.

Omni is required to provide updates within 30 days of transition to DEQ when any section of the Property transitions from conception to final common plan of development.

The CAO assesses a civil penalty of \$5,400 which could have been reduced to \$2,700 if the document was signed and returned to DEQ within 20 calendar days of its receipt.

A copy of the CAO can be downloaded [here](#).