

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Omni Home Builders at Diamondhead  
Resort Community, LLC  
ATTN: Mark Lane, Managing Member  
337 Diamondhead Drive  
Hot Springs, AR 71913

LIS No. 22- 059  
Permit No. ARR156579  
AFIN 26-01752

and

Omni Home Builders at Diamondhead  
Resort Community, LLC  
440 Catherine Park Road, Suite C  
Hot Springs, AR 71913

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and the rules issued thereunder by the Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of Omni Home Builders at Diamondhead Resort Community, LLC (Respondent) and the Division of Environmental Quality<sup>1</sup> (DEQ or “Division”), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

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<sup>1</sup> Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Department of Energy and Environment.

1. Respondent is the owner of real property (“Property”) located in the Diamondhead Resort Community in Hot Spring and Garland Counties, Arkansas.
2. In 2018, Respondent purchased the Property from one of the several successors of the original owner and developer of the Diamondhead Resort Community. The original owner and developer created a common plan of development for the Property including platting the Property. After an initial period of development, the Property lay fallow and development was not pursued under a common plan for decades. Respondent’s purchase of the Property was after many years without a common plan of development.
3. Respondent has sold a few lots to individual builders as those lots were originally platted.
4. Respondent is in the process of developing a common plan of development for the Property.
5. Respondent has sought to maximize the value of the purchase of the Property by selective-cut harvesting timber (an activity commonly involved in silviculture) in discrete locations of Hot Spring County.
6. Construction activities on Respondent’s Property if undertaken as part of a common plan of development fall within the definition of a “Large Construction Site” in accordance with APC&EC Rule 6.103 and Part I, Section A of the Stormwater Construction General Permit.
7. At the time in which the construction activities began on Respondent’s Property those construction activities have the potential to discharge stormwater associated with construction activity to unnamed tributaries, thence to Lake Catherine, thence to the Ouachita River in Segment 2F of the Ouachita River Basin.

8. Construction activities on Respondent's Property are regulated pursuant to the National Pollutant Discharge Elimination System (NPDES) once construction under a common plan of development occurs.

9. DEQ issued Stormwater Construction General Permit, Permit Number ARR150000 ("Permit"), on May 4, 2016, with an effective date of November 1, 2016, and an expiration date of October 31, 2021. DEQ has re-issued Stormwater Construction General Permit, Permit Number ARR150000 ("Permit"), on May 4, 2021, with an effective date of November 1, 2021, and an expiration date of October 31, 2026.

10. Pursuant to the federal Clean Water Act, 33 U.S.C. § 1311(a) *et seq.*, the NPDES program prohibits the discharge of pollutants except as in compliance with a permit issued under the NPDES program in accordance with 33 U.S.C. § 1342(a).

11. DEQ is authorized under the Arkansas Water and Air Pollution Control Act ("Act") to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.

12. Ark. Code Ann. § 8-4-217(a)(3) provides:

(a) It shall be unlawful for any person to:

...

(3) Violate any provisions of this chapter or of any rule or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].

13. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes DEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation for any violation of any provision of the Act and any rule or permit issued pursuant to the Act.

14. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B), “[e]ach day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

15. On December 12, 2019, DEQ conducted a Reconnaissance Inspection of the site in response to a public complaint filed with DEQ on December 5, 2019. The inspection report indicated that the Respondent was in violation of APC&EC Rule 6.203 and Ark. Code Ann. § 8-4-217(b)(1) for failing to obtain coverage under the Stormwater Construction General Permit, Permit Number ARR150000.

16. On December 27, 2019, DEQ notified Respondent by letter of the inspection results and requested a written response to the violations noted in the inspection report be submitted to DEQ by January 10, 2020.

17. On January 7, 2020, Respondent submitted a response to the inspection performed on December 12, 2019. In that response, Respondent stated that construction and development activities were not being conducted and therefore a Permit was not required as timber harvest activities were the only ongoing activity.

18. On January 15, 2020, DEQ conducted a Reconnaissance Inspection of the site. The inspection report indicated the same findings as the December 12, 2019 inspection.

19. On February 3, 2020, DEQ notified Respondent by letter of the inspection results and requested a written response to the violations be submitted to DEQ by February 21, 2020.

20. On February 10, 2020, DEQ received a public complaint concerning erosion and runoff at the site by online submission.

21. On February 12, 2020, Respondent, at the request of DEQ, submitted to DEQ a Notice of Intent (NOI) for Coverage under ARR150000, Erosion Control Plan, and Stormwater Pollution Prevention Plan (SWPPP).

22. On February 20, 2020, DEQ received a public complaint concerning erosion and runoff at the site by online submission.

23. On March 3, 2020, DEQ issued a Notice of Coverage (NOC) under General Permit Number ARR150000 to Respondent and assigned a permit tracking number of ARR156579.

24. On April 8, 2020, and April 23, 2020, DEQ conducted construction stormwater inspections of the site in response to multiple public complaints. The inspection report indicated the following violations:

a. Respondent has not properly operated and maintained the site as required by the Permit as demonstrated by the following:

- i. The SWPPP and inspection reports were not being maintained at the construction site as required by Part II, A.2.A of the Permit.
- ii. The SWPPP and site maps were not updated to represent the current activities taking place at the site as required by Part II, Section A of the Permit.
- iii. Off-site tracking is occurring in multiple locations throughout the development due to Respondent's failure to stabilize entrances where clearing activities were occurring. This is a violation of Part II, A.4.H.2 of the Permit.
- iv. No erosion or sediment control devices such as silt fences or check dams were observed being utilized in the areas of development as required by Part II, A.4.G.1 and Part II A.4.G.3 of the Permit.

- v. Clearing activities occurred within twenty five (25) feet of a natural buffer zone of an unnamed stream. This is a violation of Part II, A.4.G.2.B of the Permit.

Respondent's failures to comply with permit conditions and operate and maintain the site properly as required by the Permit are violations of Ark. Code Ann. § 8-4-217(a)(3).

- b. DEQ also observed evidence that in-stream activities had occurred and that equipment, used for timber harvesting, had entered waters of the state. Pursuant to Rule 2.305 and Part I, Section B, Condition 12 of the Permit, Respondent is required to obtain a Short Term Activity Authorization (STAA) from DEQ before performing any in-stream activities.

25. On April 27, 2020, DEQ notified Respondent of the April 8, 2020, and April 23, 2020, inspection via email, and the inspection report was sent to the Respondent on April 30, 2020, via letter.

26. On May 8, 2020, Respondent submitted a response to the inspection performed on April 8, 2020 and April 23, 2020, stating that all of the items raised in the inspection reports are timber harvesting activities.

27. On July 13, 2020, DEQ conducted an inspection of the site. The inspection report indicated the following violations:

- a. Respondent has not properly operated and maintained the site as required by the Permit as demonstrated by the following:
  - i. Respondent has not installed structural Best Management Practices (BMPs) or begun stabilization in the construction areas. No further

activity has occurred at any locations where clearing occurred and no soil stabilization efforts have been made. For example, the May 11, 2020, SWPPP inspection noted location DH01 needed inlet protection and DH02 needed to have the road cleaned, ditch fixed, and needed a check dam. Every inspection following the May 11 inspection noted the BMPs still needed to be installed. These actions are required by Part I, Section B.13.B and Part II, A.4.G of the Permit.

- ii. Sediment and debris from the construction areas has migrated into drainages along Plum Hollow Blvd. and Independence Dr. This is a violation of Part II, A.4.H.2 of the Permit.
- iii. Site maps do not provide sufficient detail of areas of construction and activity at the site as required by Part II, Section A.4.F of the Permit.

Respondent's failures to comply with permit conditions and operate and maintain the site properly as required by the Permit are violations of Ark. Code Ann. § 8-4-217(a)(3)

28. On July 22, 2020, DEQ notified Respondent of the July 13, 2020, inspection results via letter.

29. On August 6, 2020, Respondent submitted a response to the inspection performed on July 13, 2020, stating that all of the items raised in the inspection report are timber harvesting activities.

30. On August 17, 2020, DEQ informed Respondent that the August 6, 2020, inspection response was inadequate and requested additional information to address the inadequate response. DEQ informed Respondent that the additional information must be submitted by

September 1, 2020. DEQ also sent this letter by email to Managing Member Mr. Mark Lane and the consulting engineers that submitted Respondent's August 6, 2020 response.

31. DEQ did not receive a response to its August 17, 2020, letter by September 1, 2020.

32. Silvicultural activities, including harvesting operations for production of forest products, are specifically exempt under Section 404(f)(1) of the Clean Water Act.

33. Respondent asserts that it was conducting timber harvesting activities in areas that were platted under a common plan of development and that development in those areas of the property had ceased for several decades.

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall 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.
2. Respondent shall obtain a STAA from DEQ before performing any in-stream activities.
3. Respondent shall immediately implement BMPs for any construction activities and comply with all other terms and conditions of the Permit.
4. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ a revised Stormwater Pollution Prevention Plan (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 detailed site map(s) shall be divided into zones to address the topography and scale. The site maps at a minimum, shall include the following:



- a. drainage patterns and approximate slopes anticipated after major grading activities;
- b. areas where soil disturbance will occur;
- c. locations of all controls and buffers, either planned or in place;
- d. locations where temporary or permanent stabilization practices are expected to be used;
- e. surface waters (including wetlands) either at, adjacent, or in close proximity to the site, and also indicate whether those waters are impaired;
- f. locations where stormwater discharges from the site to a surface water body or a municipal separate storm sewer system;
- g. vehicle wash areas; and
- h. designated points on the site where vehicles will exit construction areas onto paved roads.

5. Respondent shall submit updates within thirty (30) days of transition to DEQ when any section of the Property transitions from conception to final common plan of development.

6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Five Thousand Four Hundred Dollars(\$5400.00) , or one-half of the full civil penalty of Two Thousand Seven Hundred Dollars (\$2700.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. Payment is due within thirty (30) calendar days of the effective date of this Order. Such payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

DEQ, Fiscal Division  
5301 Northshore Drive

North Little Rock, AR 72118

In the event that Respondent fails to pay the civil penalty within the prescribed time, DEQ shall be entitled to attorneys' fees and costs of collection.

7. Failure to meet any requirement or deadline of this Order constitutes a violation of this Order. If Respondent should fail to meet any such requirements or deadlines, Respondent consents and agrees to pay on demand to stipulated penalties according to the following schedule:

- a. First day through fourteenth day: \$100.00 per day
- b. Fifteenth day through the thirtieth day: \$500.00 per day
- c. Each day beyond the thirtieth day: \$1000.00 per day

8. These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions that may be available to by reason of failure by Respondent to comply with the requirements of this Order.

9. If any event, including but not limited to an act of nature, occurs that causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this Order, Respondent shall so notify, in writing, as soon as reasonably possible after it is apparent that a delay will result, but in no case after the due dates specified in this Order. The notification shall describe in detail the anticipated length of the delay, the precise cause of the delay, the measures being taken and to be taken to minimize the delay, and the timetable by which those measures will be implemented.

10. DEQ may grant an extension of any provision of this Order if Respondent requests such an extension in writing, and the delay or anticipated delay has or will be caused by circumstances beyond the control of and without the fault of Respondent. The time for performance may be

extended for a reasonable period, but in no event longer than the period of delay resulting from such circumstances. Respondent has the burden of proving that any delay is caused by circumstances beyond the control and without the fault of Respondent, as well as the length of the delay attributable to such circumstances. Failure to notify promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

11. All requirements by the Order and Agreement are subject to approval by DEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies. Failure to respond adequately to such Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this Order.


12. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this Order based upon the comments received within the thirty (30) day public comment period. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of this Order shall occur on or about the 10th or 25th day of the month following the date this Order is executed. As provided by APC&EC Rule 8, this matter is subject to being reopened upon Commission initiative, or in the event a petition to set aside this Order is granted by the Commission.

13. Nothing in this Order shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate

Respondent from any past, present, or future conduct that is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

14. By virtue of the signature appearing below, the individual represents that he or she is a Managing Member of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein as attested by the secretary of said entity. Execution of this Order by an individual other than a Managing Member of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 24~~TH~~ DAY OF May, 2022.

  
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JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Omni Home Builders at Diamondhead Resort Community, LLC

BY:   
\_\_\_\_\_  
(Signature)

James T. Davis  
\_\_\_\_\_  
(Typed or printed name)

TITLE: Co-Founder

DATE: 3/22/2022