

MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

Mike Kehoe
Governor

Kurt U. Schaefer
Director

May 2, 2025

Toni Westbrooks-Barnes, President
Indian Creek Hills Property Owners Association, Inc.
P.O. Box 638
Eldon, MO 65026
Via email to <mailto:ichpoatours@aol.com>

RE: Indian Creek Hills Subdivision, Unpermitted, Morgan County

Dear Toni Westbrooks-Barnes:

Enclosed with this correspondence, please find a copy of fully executed Abatement Order on Consent (AOC) No. 2025-WPCB-1915 for you and a summary of the Schedule of Compliance (SOC) describing the scheduled milestones and their dates due to the Missouri Department of Natural Resources. The department would like to thank you for your assistance in reaching an agreement in this matter.

Please be advised that the terms of AOC No. 2025-WPCB-1915 are in effect and enforceable as of May 2, 2025. Please note that the first milestone in the SOC contained in the AOC requires you to develop a Holding Tank Management Plan and submit it to the department for review and approval by June 1, 2025. Please refer to the summary on page 16 of the AOC and Paragraphs 23 through 39 of the AOC for future required submissions.

If you have further questions, you may contact Erin Heidolph at Department of Natural Resources, Water Protection Program, Compliance and Enforcement Section, P.O. Box 176, Jefferson City, MO 65102-0176; by phone at 573-751-8309; or by email at cwenf@dnr.mo.gov. Thank you for your assistance.

Sincerely,

WATER PROTECTION PROGRAM

Joe Clayton
Compliance and Enforcement Section Chief

Enclosure

c: Laura Grootens, Unit Chief, Central Field Office



BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)	
)	
Indian Creek Hills Property)	
Owners Association, Inc.)	Order No. 2025-WPCB-1915
)	
Proceeding under the)	
Missouri Clean Water Law)	

ABATEMENT ORDER ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2025-WPCB-1915, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because the Indian Creek Hills Property Owners Association, Inc. (Respondent) violated the Missouri Clean Water Law (MCWL). This AOC is issued under the authorities of Sections 644.056 and 644.079, Revised Statutes of Missouri (RSMo). Failure to comply with this AOC is, by itself, a violation of Section 644.076.1, RSMo. Litigation may occur without further notice if there is not compliance with the requirements of this AOC. This AOC does not constitute a waiver or a modification of any requirements for the MCWL, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve the Respondent of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover civil or administrative penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, 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 Indian Creek Hills Subdivision (Subdivision) located at 26031 Morning Dew Road, Rocky Mount, in Morgan County. The Subdivision's method of wastewater disposal has not been approved by the Department. The Subdivision is approximately 463 acres in size and consists of approximately 853 recreational-use and residential-use lots. Stormwater runoff from the Subdivision drains to the Lake of the Ozarks, a class L2 lake; an unnamed, presumed use class L3 lake locally known as Lake Pocahontas; and two unnamed presumed use tributaries to the Lake of the Ozarks, both class C gaining streams. The Subdivision does not have a wastewater treatment facility (WWTF) and is therefore, unpermitted, and does not currently operate subject to the conditions and requirements of a Missouri State Operating Permit (Permit).

3. The Lake of the Ozarks and the unnamed, presumed use class L3 lake, locally known as Lake Pocahontas, 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. Common promotional plan is "[a] plan, undertaken by one (1) or more persons, to offer lots for sale or lease ...," as the term is defined by 10 CSR 20-6.030(1)(A)2.

6. Developer is "[a]ny person who directly or indirectly, sells or leases or offers to sell or lease, any lots ...," as the term is defined by 10 CSR 20-6.030(1)(A)3.

7. Lot is "[a]ny portion, piece, division, unit or undivided interest in real estate, if the interest includes the right to the exclusive use of a specific portion of real estate, whether for a specific term or in perpetuity," as the term is defined by 10 CSR 20-6.030(1)(A)5.

8. Residential housing development is “[a]ny land which is divided or proposed to be divided into three (3) or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan,” as the term is defined by 10 CSR 20-6.030(1)(A)6.

9. Developers offering lots for sale or lease as part of a common promotional plan are required to obtain 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).

10. 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, as established in 10 CSR 20-6.030(1)(D)1.

11. On June 8, 2023, Department staff conducted an investigation at the Subdivision in response to receiving an environmental concern alleging improper management of wastewater 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 campsite area which is served by an unapproved onsite septic system with lateral leach field, as well as more than 12 lots from the public right of way within the subdivision that have an unknown method of wastewater management. Department staff did not make any observations of the Subdivision’s receiving waterbodies or collect any samples during the investigation. Subsequent investigation after the June 8, 2023, site visit confirmed the Subdivision is subject to 10 CSR 20-6.030, the Residential Housing Development (RHD) Rule, based on the size of the Subdivision and lot sizes within the Subdivision, and that the Respondent is in violation of the RHD Rule for not receiving written approval from the

Department for the method of wastewater handling, treatment, and disposal prior to sale, lease, or commencement of construction on lots within the Subdivision.

12. On October 11, 2023, the Department sent a Letter of Warning (LOW) to the Respondent based on the observations made by Department staff during the June 8, 2023, inspection, and based on subsequent information obtained from publicly available information and Morgan County records. The LOW cited violations for failure to obtain written approval from the Department for the method of wastewater handling, treatment, and disposal prior to sale, lease, or commencement of construction on lots within the Subdivision and for failure to use centralized sewage collection and treatment for lots less than 40,000 square feet (0.92 acres). The LOW required a response from the Respondent by November 10, 2023, and gave specific requirements for corrective actions the Respondent must take to resolve the violations of the MCWL occurring within the Subdivision.

13. On November 8, 2023, the Department was contacted by an attorney on behalf of the Respondent, requesting additional time to submit a response to the October 11, 2023, LOW. The Department granted the requested extension, and on December 6, 2023, the Department received a written response from the attorney on behalf of the Respondent.

14. On December 13, 2023, the Department sent the Respondent a notification letter intended to inform the Respondent, as well as all lot owners, residents, and property owners of the Subdivision, of the violations of the MCWL occurring within the Subdivision. The letter explained why the Subdivision does not meet the requirements of the MCWL, options to resolve the violations, and formally notifying the Respondent and all property owners that all sales within the Subdivision, new 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.

15. On March 6, 2024, the Department sent the attorney and the Respondent a response to the December 6, 2023, correspondence explaining the Department's position on the Respondent's requirements to comply with the MCWL and resolve the violations documented in the October 11, 2023, LOW. On the same day, the Department received a telephone call from the Respondent requesting information and assistance on how to resolve the violations occurring within the Subdivision.

16. On April 24, 2024, the Respondent met with the Rocky Mount Sewer District (RMSD) Board to discuss connection of the Subdivision to the RMSD as part of the RMSD's phased expansion project. The RMSD Board was amenable to working with the Respondent on connection of the Subdivision.

17. On July 23, 2024, the Respondent submitted a written correspondence to the Department informing the Department that the Respondent had retained an engineer and was formally requesting referral to the Department's Compliance and Enforcement Section to pursue terms, conditions, and a schedule in an abatement order on consent.

18. On September 11, 2024, the Department received a preliminary engineering report (PER), submitted by Alpha Engineering & Surveying, LLC, on behalf of the Respondent. The PER included a proposed method of utilizing regular pumping and hauling of holding tanks for temporary, interim wastewater handling, treatment, and disposal to serve the Subdivision, and the proposed method of connection to the RMSD for long-term, permanent wastewater handling, treatment, and disposal to serve the Subdivision. The PER also included a proposed schedule for implementation of the interim method and construction of the permanent method.

19. On April 10, 2025, the Department approved the PER and the proposed interim and permanent methods for wastewater handling, treatment, and disposal to serve the Subdivision, and on April 17, 2025, the Department sent the Respondent a PER approval letter.

STATEMENT OF VIOLATIONS

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

20. 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);

21. 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

22. 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 the Lake of the Ozarks and an unnamed lake and tributaries to the Lake of the Ozarks, waters of the State, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

AGREEMENT

23. The Department and the Respondent desire to amicably resolve all claims that may be brought against the Respondent for violations alleged above in Statement of Violations.

24. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties. Any changes in ownership or corporate status, including but not limited to any

transfer of assets or real or personal property, shall not affect the responsibilities of the Respondent under this AOC.

25. Sections 644.076.1 and 644.079, RSMo, authorize the imposition of penalties for violations of the MCWL and establish monetary penalties of up to \$10,000 per day per violation. The penalty contained in this AOC was calculated using the Penalty Assessment Protocol described in 10 CSR 20-3.010.

26. The Respondent, in compromise and satisfaction of the Department's claims relating to the above-referenced violations, is ordered and agrees, without admitting liability or fault, to pay an administrative penalty in the amount of \$28,588. The Department and the Respondent further agree that \$28,588 shall be suspended as described below.

27. The suspended penalty described in the paragraph above in the amount of \$28,588 shall be suspended for a period of two years from the execution of this AOC upon the condition that the Respondent does not violate the terms of this AOC. Upon determination by the Department that the Respondent has failed to meet the terms of this AOC to the Department's satisfaction, including the requirements in Paragraphs 26 through 38, the Department may send a written demand for the suspended penalty to the Respondent. The Respondent shall have 30 days from receipt of the written demand to submit the suspended penalty. The payment shall be in the form of a check made payable to "Morgan County Treasurer, as custodian of the Morgan County School Fund" and shall be delivered with a signed copy of the AOC to:

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

28. In the period of time from the effective date of this AOC until the Subdivision has completed construction for connection of the Subdivision to the RMSD, the Respondent is

ordered and agrees to take any and all necessary actions to ensure wastewater vessels (i.e. holding tanks, onsite septic systems, pits, basins, or other similar containments vessels) within the Subdivision are maintained to prevent wastewater discharges to the environment or any illegal dumping of wastewater, even if this means implementing daily pumping and hauling, replacing compromised vessels, or removing vessels.

29. Immediately upon the effective date of this AOC, the Respondent is ordered and agrees to implement the PER's improvements schedule, which shall be incorporated herein as an enforceable condition of this AOC.

30. Immediately upon the effective date of this AOC, the Respondent is ordered and agrees to 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 is ordered and agrees to 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 is ordered and agrees to submit biannual copies of the pumping log to the Department, as indicated in Paragraph 40 of this AOC, by the 28th day of March and November each year to encompass the entire recreational season, and non-recreational season, with the first pumping log being submitted by the 28th day of November 2025. If no pumping occurred within the reporting period, the Respondent is not required to submit a pumping log, but shall submit in writing to the Department, as indicated in Paragraph 40 of this AOC, by the 28th day of March and November, an explanation of why no pumping occurred within the reporting period and how wastewater within the Subdivision is being properly managed. If the Department has concerns with the pumping logs submitted at any time while this AOC is in effect, the Department reserves the

right to require the Respondent to adhere to an increased reporting frequency established by the Department and sent to the Respondent in writing.

31. Within 30 days of the effective date of this AOC, the Respondent is ordered and agrees to continue with their existing retained engineer or retain a new professional engineer licensed in the State of Missouri to evaluate the Subdivision in its entirety for management of the interim method of wastewater handling, treatment, and disposal proposed in the PER. The engineer shall develop a Holding Tank Management Plan for submission to the Department for review and approval that recommends a proposed plan for managing the holding tanks, or other similar containment vessels, utilized in the Subdivision as part of the interim method of wastewater handling, treatment, and disposal to serve the Subdivision's wastewater needs. 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 saved as a spreadsheet or tracking log held and maintained with the Respondent's secretary and/or waste management director. The spreadsheet or tracking log may be submitted with the Holding Tank Management Plan as a blank example template to be updated by the Respondent upon Department approval of the Holding Tank Management Plan. The spreadsheet or tracking log shall include, 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 and/or inspection number, tank

material, tank capacity, and if 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 Morgan 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;

32. Within 90 days of the effective date of this AOC, the Respondent, or the engineer on the Respondent's behalf, is ordered and agrees to submit to the Department for review and approval the Holding Tank Management Plan.

33. Upon the Department's approval of the Holding Tank Management Plan, the Respondent is ordered and agrees to 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 AOC. The Respondent is ordered and agrees to 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.

34. The Respondent is ordered and agrees to consult with the Morgan County Health Department and the RMSD, as appropriate, on the implementation of the interim method of wastewater handling, treatment, and disposal (i.e. holding tanks) to ensure compliance with all Morgan County and RMSD requirements.

35. As appropriate in the PER's improvements schedule, the Respondent is ordered and agrees to 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.

36. Within 60 days of completing construction for the connection to RMSD, the Respondent, or the engineer on the Respondent's behalf, is ordered and agrees to 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.

37. Within 365 days of completing construction for connection to RMSD, the Respondent is ordered and agrees to ensure all lots within the Subdivision are connected to the RMSD, except the lots designated as primitive camping only lots, which are not required by the

Department to be connected to the RMSD on the condition that lots designated as primitive camping only remain primitive camping only with extended stay use prohibited.

38. The Respondent is ordered and agrees to comply with the MCWL, Chapter 644, RSMo, and its implementing regulations at all times in the future.

39. This AOC shall terminate upon successful completion of connection of all lots within the Subdivision not designated as primitive camping only to the RMSD; or upon the Department's determination that the Respondent has achieved compliance with the MCWL and regulations, whichever occurs first.

SUBMISSIONS

40. All other documentation submitted to the Department for compliance with this AOC 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

41. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the Respondent shall notify the Department by telephone or electronic mail: i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; and iii) proposing an extension to the deadline. Within five days of notifying the Department, the Respondent shall submit to the Department, for review and approval, a written request containing the same basic provisions of i, ii, and iii listed above. The Department may grant an extension if it deems appropriate. Failure to submit a written notice to the Department may constitute a waiver of the

Respondent's right to request an extension and may be grounds for the Department to deny the Respondent an extension.

42. Should the Respondent fail to meet the terms of this AOC, including the deadlines set out in Paragraphs 28 through 37, the Respondent shall be subject to pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$100 per day
31 to 90 days	\$250 per day
91 days and above	\$500 per day

Stipulated penalties will be paid in the form of a check made payable to "Morgan County Treasurer, as custodian of the Morgan County School Fund." Any such stipulated penalty shall be paid within ten days of demand by the Department and shall be delivered to:

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

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

44. Nothing in this AOC forgives the Respondent from future non-compliance with the laws of the State of Missouri, nor requires the Department or State of Missouri to forego pursuing by any legal means for any non-compliance with the laws of the State of Missouri. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no

other obligations of the parties, be they express or implied, oral or written, except those expressly set forth herein. The terms of this AOC supersede all previous memoranda of understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.

45. By signing this AOC, all signatories assert that they have read and understood the terms of this AOC, and that they have the authority to sign this AOC on behalf of their respective party.

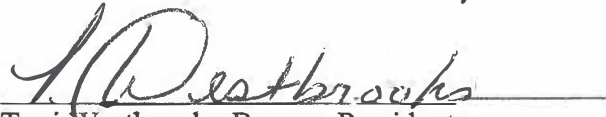
46. The effective date of the AOC shall be the date the Department signs the AOC. The Department shall send a fully executed copy of this AOC to the Respondent for their records.

NOTICE OF APPEAL RIGHTS


47. By signing this AOC, the Respondent consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

SIGNATORY AUTHORITY

Agreed to on this 19 day of April, 2025


Toni Westbrook-Barnes, President
Indian Creek Hills Property Owners Association, Inc.

Agreed to and ordered on this 2nd day of May, 2025


DEPARTMENT OF NATURAL RESOURCES
John Hoke, Director
Water Protection Program

c: Laura Grootens, Unit Chief, Central Field Operations
Operating Permits Section
General Counsel's Office

Summary Schedule for Indian Creek Hills Subdivision Abatement Order on Consent No. 2025-WPCB-1915

Deliverables	Scheduled Due Date
1. Submit wastewater tank pumping and hauling records, or pumping explanation, as needed. (Paragraph 30, Page 8 of AOC)	Immediately upon effective date of AOC, by the 28 th day of April and December of each calendar year until the AOC is terminated.
2. Develop a Holding Tank Management Plan for submission to the Department for review and approval. (Paragraph 31, Page 9 of AOC)	June 1, 2025
3. Submit for Department review and approval, a Holding Tank Management Plan. (Paragraph 32, Page 10 of AOC)	July 31, 2025
4. Implement the Holding Tank Management Plan and take steps to ensure continuity and compliance with the Holding Tank Management Plan. (Paragraph 33, Page 11 of AOC)	Upon Department approval of the Holding Tank Management Plan.
5. Submit a Statement of Work Completed Form. (Paragraph 36, Page 11 of AOC)	Within 60 days of completing construction.
6. Ensure all lots not designated as primitive camping only lot within the Subdivision are connected to the RMSD. (Paragraph 37, Page 11 of AOC)	Within 365 days of completing construction for connection to the RMSD.