

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Bob Holden, Governor • Stephen M. Mahfood, Director

www.dnr.state.mo.us

April 23, 2004

CERTIFIED MAIL 7099 3220 0009 3735 6740
RETURN RECEIPT REQUESTED

Mr. Charles McElyea, Atty. at Law
190 Court Circle
P.O. Box 559
Camdenton, MO 65020

RE: Big Island Subdivision, Camden County, MO-0123013

Dear Mr. McElyea:

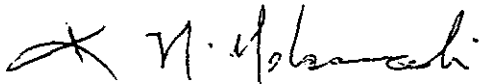
Enclosed is a copy of the fully executed Settlement Agreement between the Department of Natural Resources, Attorney General of Missouri, and Folsom Ridge Development LLC. The department appreciates your cooperation to bring Big Island Subdivision into compliance with the Missouri Clean Water Law.

Please note the schedule outlined in paragraphs 3-9 to reinstall the water distribution lines and to comply with all the requirements of the construction permit when issued.

If you have any questions concerning this letter, you may contact Ms. Elena Seon of my staff at P. O. Box 176, Jefferson City, MO 65102-0176 or at (573) 751-9391. If you have any questions concerning the requirements of the Settlement Agreement please contact Mr. Mike Tharpe at (573) 522-1801. The engineering report, plans and specs should be submitted to the Public Drinking Water Branch at 101 Adams Street, Jefferson City, MO 65101.

Sincerely,

WATER PROTECTION PROGRAM



Kevin Mohammadi, Chief
Compliance and Enforcement Section

KM:esn

Enclosure

- c: Bruce Martin, Southwest Regional Office, with enclosure
Robert Cook, Attorney General's Office, with enclosure
Mike Tharpe, Drinking Water Branch, with enclosure
Ben Pugh, Big Island Subdivision, with enclosure

Exhibit No. 21
Case No(s) WC-2006-0082/WX2007-0277
Date 3-2-07 Rptr pk

FILED²

APR 02 2007

Missouri Public
Service Commission

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WATER PROTECTION PROGRAM

Integrity and excellence in all we do

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made between the Missouri Department of Natural Resources, the "Department"; Jeremiah W. (Jay) Nixon, Attorney General of Missouri, the "AGO"; and Folsom Ridge, L.L.C., "Folsom". The parties, the Department, the AGO, and Folsom, enter into this agreement on the date this Settlement Agreement is signed by the Department.

WHEREAS, Jeremiah W. (Jay) Nixon is the duly elected, qualified, and acting Attorney General of the State of Missouri.

WHEREAS, the Department is the state agency authorized to administer the provisions of the Missouri Clean Water Law, Chapter 644 of the Revised Statutes of Missouri (as amended) on behalf of the Clean Water Commission and the Missouri Safe Drinking Water Law, Chapter 640 of the Revised Statutes of Missouri on behalf of the Safe Drinking Water Commission.

WHEREAS, Folsom developed the Big Island Subdivision (Big Island) located in the NW $\frac{1}{4}$, NW $\frac{1}{4}$, SW $\frac{1}{4}$, Sec. 6, T38N, R17W, in Roach, Camden County, Missouri.

WHEREAS, Folsom built a wastewater treatment facility (WWTF), septic tank with a recirculating sand filter and chlorination, including collection (sewer) lines, to serve the residents of Big Island. Sludge is disposed of by a contract hauler.

WHEREAS, the receiving stream for the WWTF is the Little Niangua Arm of the Lake of the Ozarks basin, Class L2, which is waters of the state as defined in Section 644.016(17), RSMo.

WHEREAS, The Big Island Home Owners Association (BIHOA) owns and operates the WWTF pursuant to Missouri State Operating Permit (MSOP) MO-0123013. The MSOP expires on February 24, 2005.

WHEREAS, The Big Island Home Owners Association (BIHOA) submitted an engineering report, plans and specifications for a new community public water supply well, storage facility and distribution system and received approval for this report on December 18, 1998 pursuant to Public Drinking Water Program Review Number 31182-98. The approval was valid for two years.

WHEREAS, Folsom constructed a community water system as defined in Missouri Safe Drinking Water Regulation 10 CSR 60-2.015(2)(C)9.

WHEREAS, On December 18, 1998 the Missouri Public Drinking Water Program requested The Big Island Home Owners Association (BIHOA) to provide detailed drawings of the trench to match the revised specifications submitted by (BIHOA) and show the earthen shelf on which the water line was to be placed. The Missouri Public Drinking Water Program subsequently received the drawings, showing the earthen shelf.

WHEREAS, On February 23, 2000 final approval of the construction done under permit review number 31182-98 was sent to BIHOA which stated that this final approval does not include the distribution lines as the Department was unable to observe the placement of these lines to verify adequate separation of the water and sewer lines in accordance with community drinking water construction standards. This final approval also included the caveats that the Department reserves the right to require any and all necessary alterations of the system to bring it back into compliance with appropriate standards and to withdraw approval of the water supply facilities any time they are found to be unsatisfactory.

WHEREAS, The Big Island Home Owners Association (BIHOA) owns and operates the Drinking Water Treatment Plant pursuant to Public Water Supply permit (PWS) MO-3031265.

WHEREAS, on January 12, 2004, department staff inspected Big Island and observed the following violations: the water and wastewater collection and distribution lines were placed in the same trench without proper separation between the lines; the water distribution lines were not placed on an undisturbed earthen shelf as was stated in the as-built drawings; and the water and sewer lines were not constructed in accordance with the approved plans.

WHEREAS, failure to construct according to plans is a violation of Missouri Clean Water Law, Section 644.076.1, RSMo, and 10 CSR 20-8.120 (11)(C)1 and Missouri Safe Drinking Water Law, Section 640.115.2, RSMo, and 10 CSR 3.010(1).

WHEREAS, the Missouri Clean Water Law, Section 644.076.1, RSMo, makes it unlawful to violate the Missouri Clean Water Law and regulations promulgated pursuant thereto and establishes civil penalties of up to and including ten thousand dollars and no cents (\$10,000.00) per day for each day, or part thereof for each violation.

WHEREAS, the Missouri Safe Drinking Water Law, Section 640.130.4, RSMo, makes it unlawful to violate the Missouri Safe Drinking Water Law and regulations promulgated pursuant thereto and establishes civil penalties of up to and including fifty dollars and no cents (\$50.00) per day, or part thereof for the first violation of sections 640.100 to 640.140 and one hundred dollars and no cents (\$100.00) per day or part thereof for the second violation and for each violation thereafter.

WHEREAS, the Department, the AGO, and Folsom desire to resolve all disputes or claims which could be made against Folsom for the above-alleged violations of the Missouri Clean Water Law and Missouri Safe Drinking Water Law.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Department, the AGO, and Folsom further stipulate and agree as follows:

1. The provisions of this Settlement Agreement shall apply to and be binding upon the Department, the AGO, and Folsom, as well as their successors in interest, and their successors in office. Further, each party executing this Settlement Agreement shall be responsible for ensuring that their agents, subsidiaries, affiliates, lessees, officers, servants, or any person or entity acting pursuant to, through, or for the parties, adhere to the terms of this Settlement Agreement.

2. Folsom agrees to pay a civil penalty in the amount of eight thousand dollars and zero cents (\$8,000.00) in the form of a certified check or cashier's check made payable to the "*Camden County Treasurer as Trustee for the Camden County School Fund.*" The check for the civil penalty sum is due and payable upon execution of this Settlement Agreement by Folsom. The check shall be mailed to:

Mr. Robert Cook
Assistant Attorney General
PO Box 899
Jefferson City, MO 65102

Receipt of the executed Settlement Agreement and check are acknowledged by the Department and the AGO signatures affixed hereto.

3. Within sixty (60) days of the execution of this Settlement Agreement, Folsom shall submit to the department an engineering report, plans and specifications,

identifying the corrections required to be made to the water distribution system required or proposed to be made to correct issues necessitating this Settlement Agreement. That report must contain the signature and seal of an engineer registered in the State of Missouri to practice such work. That engineer shall respond to the department regarding requests for clarification of information, inclusion of additional information and the like and shall be transmitted to the department within thirty (30) days of request by the department for further information.

4. Within one hundred and eighty (180) days of the Department's approval of the engineering report, plans and specifications and issuance of a construction permit, Folsom shall complete modification of the water distribution system weather permitting.

5. Folsom shall submit to the department an engineer's certification of construction completion.

6. Under no condition shall any construction take place to modify, correct or replace any portion of the water distribution system until the construction permit, referenced in paragraph 5 above, has been issued by the department, and all such construction must be in strict compliance with the approved plans and specification reviewed and approved by the department.

7. Folsom shall notify the department's Southwest Regional Office (SWRO), and in particular the engineering section of that office, of the commencement of construction and shall make arrangements with that office for inspections to be made at intervals during the reconstruction. Folsom, or his general contractor, shall make such arrangements at least seventy-two (72) hours in advance of the anticipated need for such inspection and agrees to advise of any canceling or rescheduling needed at least forty-eight (48) hours before such inspection is scheduled to take place.

8. Folsom agrees that, in the event of any conflict in placement and/or alignment between water and wastewater piping during the course of the project, that he, or his contractor, shall communicate such conflict to the engineering section of the SWRO and shall resolve such conflict with approval from that office. Folsom, or his contractor, also agrees to properly record such resolutions on "as-built" plans to be submitted at the time the project is completed. Finally, Folsom agrees to refrain from covering such resolutions with fill material until inspected by SWRO engineering staff, if so directed by that office.

9. The terms of this agreement shall not be deemed to have been satisfied until the project has been subjected to a Final Construction Inspection and approved by staff from the SWRO and until Folsom's engineer has submitted a properly sealed certification of project completion, to include a statement that the project was constructed in accordance with previously approved plans and specifications.

10. Should Folsom fail to meet the terms of this Settlement Agreement, including the deadlines set out in paragraphs 3 - 9, Folsom agrees to pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$100.00 per day
31 to 90 days	\$250.00 per day
91 days and above	\$500.00 per day

Any such stipulated penalty shall be paid within ten (10) days of demand by the AGO as described in paragraph 2. above. This stipulated penalty is not a civil penalty, nor an administrative penalty. Rather it is a sanction for not complying with the terms of this agreement.

11. Nothing in this Settlement Agreement shall be construed as excusing or

forgiving future noncompliance with the Missouri Clean Water Law, Chapter 644, RSMo, and its implementing regulations or the Missouri Safe Drinking Water Law, Chapter 640, RSMo, and its implementing regulations. In the event that Folsom fails to pay the civil penalty or comply with any other terms as specified herein, a breach of this Settlement Agreement shall be deemed to have occurred and litigation to require compliance or any other remedies will be pursued, including but not limited to, filing suit for the violations of the Missouri Clean Water Law and/or the Missouri Safe Drinking Water Law as alleged in this Settlement Agreement.

12. Execution of this Settlement Agreement shall be complete when the Department has signed and dated the Settlement Agreement. As the last party signing the Settlement Agreement, the Department shall promptly distribute copies of the executed Settlement Agreement to the other signatories.


13. Upon receipt of full payment of the above-mentioned penalty and full compliance with this Settlement Agreement, the Department and the AGO agree to refrain from initiating or asserting against Folsom any civil or administrative suit claiming violations of the Missouri Clean Water Law, Chapter 644, RSMo, and Missouri Safe Drinking Water Law, RSMo 640, as alleged in this Settlement Agreement.

14. Each signatory to this Settlement Agreement avers that he or she has the authority to bind his or her respective party to this Settlement Agreement as evidenced by their signature on this Settlement Agreement.

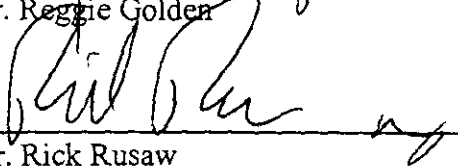
15. In consideration for the release contained herein, Folsom agrees to comply with all applicable Missouri water pollution statutes and regulations in the future.

In Witness Whereof, the parties have executed this Agreement as follows:

FOLSOM RIDGE DEVELOPMENT LLC

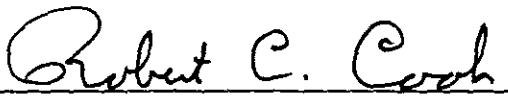
By: 
Mr. Reggie Golden

Date: 4/10/04

By: 
Mr. Rick Rusaw

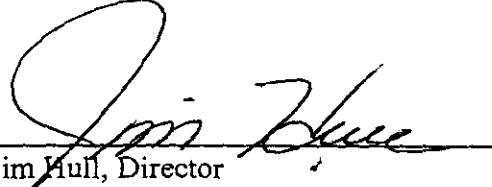
Date: 4/10/04

**JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL OF MISSOURI**

By: 
Robert C. Cook, Assistant Attorney General

Date: 4/20/04

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: 
Jim Hull, Director
Water Protection Program

Date: 4-26-04