

Guidelines for Condominiums and Other Common Interest Developments

EAST BAY REGIONAL PRIVATE SEWER LATERAL PROGRAM

These guidelines are intended for use within Common Interest Developments. Common Interest Developments include most condominium and townhome projects and planned unit developments. The guidelines explain what must be done by each property owner within a Common Interest Development, and by their Homeowners' Association, to comply with East Bay Regional Private Sewer Lateral (PSL) Program requirements.

Regional PSL Program Requirements Overview

Repairing or replacing old cracked PSLs ensures that rainwater does not enter the sanitary sewer system during storms. Too much rainwater can overwhelm the sanitary sewer system, allowing partially treated sewage to flow into the Bay. Visit www.eastbaypsl.com for more information.

To address this problem, the Regional PSL Program requires property owners to obtain a Compliance Certificate from EBMUD indicating that all PSLs associated with their parcel have demonstrated compliance with applicable standards. It is recommended that the condition of each PSL first be assessed to determine what work is required. Then the PSLs must be repaired or replaced, as necessary, and pass an air or water Verification Test that will be witnessed by an EBMUD inspector in order to obtain a Compliance Certificate.

Special program requirements apply within Common Interest Developments governed by a Homeowners' Association (HOA). Within such developments, individual property owners and their HOAs may need to meet deadlines to provide information to EBMUD and to certify PSLs as leak free. The requirements of the Regional PSL Program are set forth in the Regional PSL Ordinance. Section 11 of the Ordinance contains special requirements that apply to those within Common Interest Developments. The current version of the Ordinance became effective on May 24, 2019.

Where does the Regional Private Sewer Lateral Program apply?

The Regional PSL Program applies to properties in Alameda, Albany, Emeryville, Oakland, Piedmont, and the Stege Sanitary District, which serves Kensington, El Cerrito and the Richmond Annex.

What is a Private Sewer Lateral (PSL)?

The Regional PSL Ordinance defines a private sewer lateral as a pipe or pipes and appurtenances that carry sewage and liquid waste from the structure or structures served to the sewer main. All sewer pipes and appurtenances upstream of the publicly-owned sewer main, regardless of size, number, or length, including private mains and manholes, are considered private sewer laterals and are subject to program requirements, except in Albany and Alameda where a Compliance Certificate is required for the "upper" lateral only (as required by those cities' respective municipal sewer ordinances). The upper lateral is the portion of the lateral from the building down to the property line or curbside cleanout.

What is a Common Interest Development?

Under the Regional PSL Program, a Common Interest Development is a development managed or governed by a Homeowners' Association (HOA). Some examples are condominiums, townhomes, planned unit developments, stock cooperatives, and other projects where separately owned individual units or parcels exist in conjunction with a common area (which may be owned by the HOA or held under common ownership).

What is a Homeowners' Association? What if my development doesn't have one?

For purposes of the Regional PSL Program, an HOA is any nonprofit corporation or unincorporated association that manages or governs a Common Interest Development and operates in accordance with governing documents, whether or not the corporation or association is formally designated or commonly referred to as an HOA.

Any development without this type of management is not treated as a Common Interest Development, even if the development is classified in county records as condominiums, planned unit developments, or similar, but persons who own property within such developments may need to comply with Regional PSL Program requirements which apply outside Common Interest Developments.

Which requirements apply within Common Interest Developments?

A person or entity responsible to maintain any sewers within a Common Interest Development must obtain a Compliance Certificate by certifying the portion of the PSL the person or entity is responsible to maintain. EBMUD will issue a Compliance Certificate when that portion of the PSL passes a Verification Test. A passing test result shows the PSL is leak free and meets all other applicable standards. Most PSLs need repair or replacement to achieve a passing result. The person or entity responsible to maintain a PSL must perform such work as necessary.

What is the deadline for completing PSL work within Common Interest Developments?

The deadline to obtain a Compliance Certificate depends on who is responsible to maintain the PSL. Each Common Interest Development may allocate maintenance responsibility in a different way. The Covenants, Conditions and Restrictions (CC&Rs) or a similar document typically identifies the responsible party or parties. Depending on what the governing documents say, either the HOA or individual property owners may be responsible to maintain the entire PSL – and therefore also responsible to meet Regional PSL Program requirements – or the HOA and the individual property owners may each be responsible to maintain a different portion of the PSL.

- If the HOA is legally responsible to maintain all PSLs in the development, the HOA must bring all PSLs within the development into compliance. HOAs in existence as of July 12, 2019 must ensure that any necessary work is completed so that all PSLs are free of leaks and pass a Verification Test prior to July 12, 2021. For HOAs formed after July 12, 2019, the deadline is 24 months from the date of formation. However, different requirements and deadlines apply if the total combined length of PSLs under an HOA's maintenance responsibility exceeds 1,000 feet – see the Guidelines for Parcels or Parcel Groups with Laterals Exceeding 1,000 Feet at <http://www.eastbaypsl.com/eastbaypsl/guidelines.html>.
- If the property owner of the individual unit is legally responsible to maintain the PSL associated with his or her unit, the unit owner must obtain a Compliance Certificate when any of the following “triggering” events occurs: (1) before transferring title to the unit (i.e., property sale), (2) before final sign-off on a construction or remodeling permit if more than \$100,000 of work is performed, or (3) before any increase or decrease of the size of the water meter serving the property.
- In some developments, PSL maintenance responsibility is shared between homeowners and HOAs. For example, the individual homeowner may be legally responsible to maintain PSLs which exclusively serve his or her unit while the HOA assumes responsibility for shared PSLs within the development. In these cases, the HOA must bring the shared PSLs into compliance by July 12, 2021 (or within 24 months of the date of the HOA's formation, if formed after July 12, 2019), and individual homeowners must bring their PSLs into compliance when any of the three triggering events described above occurs.

Statement of Responsibility (SOR)

The amended Regional PSL Ordinance effective May 24, 2019 requires each HOA to submit a Statement of Responsibility (SOR) to EBMUD. This requirement applies to all HOAs, even those not responsible for any sewer maintenance and those which previously submitted a Letter of Responsibility to EBMUD. The deadline to provide the SOR is November 20, 2019 for HOAs that existed on or before May 24, 2019, or within 180 days of the formation of a new HOA. The following information must be included in a SOR:

- A completed Statement of Responsibility form, available here: <http://www.eastbaypsl.com/eastbaypsl/guidelines.html>
- All of the addresses and parcel numbers within the Common Interest Development, including the common area parcels if applicable. (Alameda County parcel numbers can be retrieved here: http://gis.acgov.org/Html5Viewer/index.html?viewer=parcel_viewer. Contra Costa County parcel numbers can be retrieved here: <http://www.co.contra-costa.ca.us/4650/ParcelQuest-Disclaimer>)
- A description of how PSL maintenance responsibility is allocated between the HOA and property owners and the location of the boundary between their respective areas of responsibility.
- A copy of the relevant portions of the CC&Rs or other governing documents that state the date of formation of the Common Interest Development, the manner of allocating maintenance responsibility for PSLs, along with citations to supporting provisions in the governing documents.
- A map or diagram clearly depicting parcel boundaries, the location of PSLs, private mains and/or manholes, and the extent of and boundary between the areas of property owner and HOA responsibility for PSL maintenance.
- A statement that the HOA has provided a copy of the SOR to each property owner within the Common Interest Development.

The Statement of Responsibility and all supporting documentation must be mailed to the PSL Program at EBMUD P.O. Box 24055 MS #702 Oakland, CA 94623. It is requested that a courtesy electronic copy of the complete set of information also be emailed to psl@ebmud.com. Once EBMUD has received the Statement of Responsibility form and supporting documentation from the HOA, staff will review for completeness and contact the HOA's designated agent to discuss planning the next steps toward compliance.

If the HOA is responsible to maintain more than 1,000 feet of PSL, the HOA may be subject to different requirements under Section 12 of the Regional PSL Ordinance. See Guidelines for Parcels or Parcel Groups with Sewer Laterals Exceeding 1,000 feet at <http://www.eastbaypsl.com/eastbaypsl/doc/PSLParcel1000FeetGuidelines.pdf> or contact EBMUD for more information (510) 287-1622.

Sewer Lateral Work, Permits, Inspection and Certification

Step 1: Check Lateral Condition

It is recommended that a plumbing contractor be hired to check the PSL(s) for cracks or other defects. If work is needed to repair or replace the PSL(s), proceed to Step 2. If no work is required, proceed to Step 4, except for properties in Emeryville where step 2 is required even if no repair or replacement is performed.

Step 2: Obtain Required Municipal Permits

Appropriate building and/or sewer permits must be obtained before beginning PSL repair or replacement to ensure that work is performed in accordance with local ordinance requirements. The City of Emeryville requires property owners within its jurisdiction to obtain a city permit before a Compliance Certificate is obtained even if no repair or replacement work will be performed.

City of Alameda	(510) 747-7930
City of Albany	(510) 528-5760
City of Emeryville	(510) 596-4310
City of Oakland	(510) 238-3891
City of Piedmont	(510) 420-3050
Stege Sanitary District	(510) 524-4668

Step 3: Complete Required Work

Have your contractor complete the necessary repairs or replacement of the PSL(s).

Step 4: Prepare for EBMUD Verification Test Inspection; Pay the Compliance Certificate Fee

See Guidelines for Contractors at www.eastbaypsl.com/eastbaypsl/doc/PSLContractorGuidelines.pdf for details. Also available are Contractor Guidelines for Main and Manhole Testing at <http://www.eastbaypsl.com/eastbaypsl/doc/ContractorGuidelinesforMainandManholeTesting.pdf>. During the EBMUD inspection, the map provided with the Statement of Responsibility will be used to ensure the test includes all portions of the PSL within the test applicant's maintenance responsibility, whether the applicant is a property owner or an HOA. When scheduling an inspection, EBMUD staff will provide information on applicable fees associated with the Program, including the compliance certificate fee (available at <http://www.eastbaypsl.com/eastbaypsl/fees.html>). Fees can be paid online at www.eastbaypsl.com. You may also pay by cash or check at the EBMUD New Business Office at 375 11th Street, First Floor, Oakland, CA 94607.

Step 5: Certification

Certification by HOAs. The HOA will receive a Compliance Certificate once all PSLs within the scope of the HOA's maintenance responsibility (including any private mains and manholes) have passed a Verification Test and all applicable fees have been paid. Compliance Certificates issued as a result of a passing Verification Test result obtained by an HOA are valid for 20 years. It is mandatory to re-certify the PSLs within two years of expiration.

Certification by Property Owners. If individual property owners are responsible to maintain any portion of PSLs within the Common Interest Development, Compliance Certificates for individual units will be issued when the property owner applies for a Compliance Certificate, passes the Verification Test for the portion of the PSL within the owner's maintenance responsibility, and pays applicable fees. If the PSL is fully replaced, the Compliance Certificate is valid for 20 years. If the PSL is repaired without full replacement or passes the Verification Test with no rehabilitation work done, the Compliance Certificate is valid for 7 years. No re-certification is required until the first occurrence of a triggering event after the Compliance Certificate expires.

Frequently Asked Questions (FAQ's)

1) I'm buying a condo and need to know if the HOA has provided the Statement of Responsibility (SOR) and certified the PSL as leak-free. Who do I contact?

Contact the HOA to request a copy of the SOR submitted by the HOA, and contact psl@ebmud.com to ensure that EBMUD received the HOA's SOR. In your email, ask for a copy of the SOR by providing the name of the HOA, property address and city. We will review the records and provide available

documentation to you. If your HOA has submitted a SOR showing that you have no PSL maintenance responsibilities, you may be able to use that SOR during escrow to demonstrate that your unit may be sold without first obtaining a Compliance Certificate.

2) What happens if the HOA has not provided the required documentation by November 20, 2019?

If a Statement of Responsibility has not been submitted by the deadline, the HOA is in violation of the Regional PSL Ordinance and is subject to enforcement. If you are a potential buyer or seller of a parcel within an HOA that has not submitted an SOR, your HOA would be held responsible for the maintenance and certification of the portion of PSL within the common area by a fixed deadline stated in the Regional PSL Ordinance, and you would be held responsible when a triggering event occurs to certify the portion of the PSL within your unit's separate interest and exclusive use common area.

If you are a unit owner in this situation, we recommend that you ask your HOA to submit the SOR required by the Regional PSL Ordinance. Alternatively, you may provide your own SOR by following the process set forth in Section 11(e) of the Ordinance.

A Time Extension Certificate can be purchased and a refundable \$4,500 deposit provided which allows a new property owner 6 additional months to obtain a SOR or Compliance Certificate. The \$4,500 deposit will be refunded if EBMUD is provided an SOR stating that the Property Owner is not responsible for sewer maintenance.

3) What enforcement actions are in place if an HOA does not comply?

Enforcement action may be taken against an HOA and/or the property owners within a Common Interest Development to address non-compliance with the Regional PSL Program. Non-compliance includes failing to provide a Statement of Responsibility by November 20, 2019 (or within 180 days of formation for HOAs formed after May 24, 2019), providing an incomplete SOR, and/or failing to obtain a Compliance Certificate by the applicable required deadline.

Enforcement may include the following:

- Violation follow-up fees
- Judicial enforcement
- Substantial monetary civil penalties

4) What if my HOA decides to change the allocation of responsibility for PSL maintenance?

If an HOA takes any action affecting the allocation of PSL maintenance responsibility within a Common Interest Development, the HOA must notify EBMUD by providing an updated Statement of Responsibility within 30 days of taking the action.

After November 20, 2019, if an HOA decides to increase or decrease the length of PSL the HOA is responsible to maintain, the following requirements apply:

- If the HOA acts to **increase** the length of PSL the HOA is responsible to maintain: Within two years following the action, the HOA must pass a Verification Test and obtain a Compliance Certificate for the additional portion of PSL within the area of increased responsibility.
- If the HOA acts to **decrease** the length of PSL the HOA is responsible to maintain: Prior to taking such action, the HOA will be required to pass a Verification Test and obtain a Compliance Certificate for the portion of PSL the HOA is relinquishing responsibility for (unless the HOA has already obtained an unexpired Compliance Certificate for the portion of PSL to be relinquished).