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## North Coast Regional Water Quality Control Board

January 7, 2020

Winco Holdings Inc.  
Attn: Chad W. Lamer  
650 N. Armstrong Place  
Boise, ID 83704  
[chad.lamer@wincofoods.com](mailto:chad.lamer@wincofoods.com)

Dear Mr. Lamer:

**Subject:** Notice of Violation for 2660 Petaluma Hill Road in Santa Rosa

**File:** Enforcement, Sonoma County, 38 Degrees North Project Winco Property;  
ECM PIN CW-863707

The North Coast Regional Water Quality Control Board (Regional Water Board) is the public agency with primary responsibility for the protection of ground and surface water quality for all beneficial uses within the north coast portion of the State of California. You are hereby notified that the subject parcel at 2660 Petaluma Hill Road in Santa Rosa has conditions or features violating the Water Quality Control Plan for the North Coast Region (Basin Plan), the California Water Code, and the federal Clean Water Act, due to the discharges and/or threatened discharges, of earthen material into waters of the state and United States. In particular, you have failed to comply with section 401 (33 U.S.C. 1341) and section 404 (b)(1) (33 U.S.C. 1344) of the Clean Water Act.

On October 25, 2019, the Regional Water Board was notified of the unpermitted placement of stockpiled fill within jurisdictional wetlands at the 38 Degrees North Project Site. Additional emails and phone calls on November 12, 2019, and November 14, 2019, further elaborated on the nature of the unauthorized fill.

The 38 Degrees North Project Site is located at 2660 Petaluma Hill Road in Santa Rosa and is owned by Winco Holdings Inc. (Attn: Chad W. Lamer). KW Petaluma Hill Road, LLC (Attn: Kennedy Wilson) is under contract with Winco Holdings Inc. to purchase the 38 Degrees North Project Site, which is currently in the process of being entitled for market rate apartment homes.

The property immediately to the north of the 38 Degrees North Project Site is the Kawana Springs Apartments Project site at 2604 Petaluma Hill Road. The Kawana Springs Apartments Project received a water quality certification on May 23, 2018 (WDID 1B180011WNSO), for wetland and swale fill associated with the construction of residential apartments on 5.1 acres. The Kawana Springs Apartments Project site is owned by Kawana Springs by Vintage LP (Attn: Ryan Paterson). The Kawana Springs Apartments Project is currently under construction by Precision General Commercial Contractors, Inc (Precision).

VALERIE L. QUINTO, CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

Precision had permission through a Soil Stockpile Agreement with Winco Holdings Inc, to stockpile excess dirt from the Kawana Springs Apartments Project construction site on the northeast finger of the 38 Degrees North Project Site. The area was clearly delineated with 6-foot perimeter fencing. There are no jurisdictional wetlands in the area where Precision was given permission to stockpile soil. In early October 2019, as the stockpile location neared capacity, Precision, without knowledge or consent from Winco Holdings Inc or KW Petaluma Hill Road LLC, instructed their subcontractor to open the barbed-wire fence and stockpile additional excess dirt on the 38 Degrees North Project site to the south.

When KW Petaluma Hill Road, LLC learned that Precision had taken down the fencing between the two project sites, and filled/disturbed a large area on the 38 Degrees North Project Site, KW Petaluma Hill Road, LLC. instructed Precision to immediately remove that fill material and to restore the area to the extent possible. The dirt was stockpiled on the 38 Degrees North Project site for approximately one week. In the process of removing the soil, the existing wetlands W7, W8 and W10, were impacted. Approximately 0.36 acre of seasonal wetlands were impacted by the unauthorized fill and grading activity.

The 38 Degrees North Project Site is proposed for future development of apartment homes by KW Petaluma Hill Road, LLC. Their environmental consultant, Monk & Associates had contacted the Regional Water Board for early input on requirements for obtaining a 401 Water Quality Certification prior to the unauthorized fill. Pre-application discussions have included agreements to preserve some wetlands and linear water features on the property and to offset the permanent fill of other wetlands with wetland creation credits from an authorized wetland mitigation bank. There are approximately 0.51 acres of wetlands and approximately 0.16 acre of other waters on the site.

KW Petaluma Hill Road, LLC self-reported the unauthorized fill to the Regional Water Board as soon as possible after the extent of the disturbance and damage had been evaluated. On December 17, 2019, on behalf of KW Petaluma Hill Road, LLC, Monk & Associates proposed to resolve the unauthorized grading activities with a combination of wetland mitigation credits and on-site restoration and enhancement that corresponds to pre-application discussions for the 38 Degrees North Project.

The proposal includes:

- A 2:1 mitigation ratio for wetlands that were impacted by the unauthorized fill but proposed to be filled for the future development project. Mitigation would be provided by wetland creation credits from an approved wetland mitigation bank.
- A slightly greater than 1:1 mitigation ratio for wetlands that were impacted by the unauthorized fill but were proposed to be preserved in an Open Space Preserve for the future project. Mitigation would be provided by restoring and recreating these wetlands to be slightly larger and deeper than the existing wetlands and adhering to a Wetland Mitigation Plan approved by the Regional Water Board.

The Regional Water Board agrees in concept to the December 17, 2019, proposal for restoration and mitigation and requests that the responsible party proceed to resolve the violation by formalizing the proposal through the 401 certification process. To avoid

further temporary loss of beneficial uses, increased mitigation ratios and bring the site back into compliance, a complete 401 application should be submitted within six months of the date of this Notice of Violation and the restoration should occur prior to October 15, 2020.

Please note that correcting the conditions of non-compliance at the Property does not preclude enforcement for the violations alleged in this notice. The Regional Water Board reserves its right to fully enforce the law against any violation and threatened violation by taking enforcement actions. Discharges or threatened discharges of waste, including earthen material, into waters of the state that create a condition of nuisance or pollution may subject a person to a Cleanup and Abatement Order pursuant to Water Code section 13304. An actual discharge to waters of the state, including allowing fill to remain within a wetland, may subject a person to an administrative liability up to \$5,000 per day of violation for each violation, or \$10 for each gallon of waste discharged pursuant to Water Code section 13350. Unlawful discharges to waters of the United States and/or violations of the Clean Water Act may subject a person to up to \$10,000 per day of violation for each violation, and up to \$10 per gallon of waste discharged over 1,000 gallons not cleaned up pursuant to Water Code section 13385. The Regional Water Board may refer this matter to the Attorney General for enforcement. We will contact you upon further assessment of these violations to discuss any potential associated civil liability.

Within six months of the date of this Notice of Violation, please submit a 401 application to [northcoast@waterboards.ca.gov](mailto:northcoast@waterboards.ca.gov) and copy Kaete King of the 401 staff at [Kaete.King@waterboards.ca.gov](mailto:Kaete.King@waterboards.ca.gov). Additionally, submit evidence of restoration of wetlands by October 15th, 2020, to Kaete King.

If you have any questions regarding this matter, please contact Kaete King at the above email or (707) 576-2848. You may also contact me at [Gil.Falcone@waterboards.ca.gov](mailto:Gil.Falcone@waterboards.ca.gov) or (707) 576-2830.

Sincerely,

Gil Falcone  
Senior Environmental Scientist  
Southern Nonpoint Source and 401 Certification Unit

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Exhibit A: Regulatory Citations  
Exhibit B: Areas of Impact

cc:

Winco Holdings Inc., [Chad.Lamer@wincofoods.com](mailto:Chad.Lamer@wincofoods.com)  
KW Petaluma Hill Road, LLC, [deadie@kennedywilson.com](mailto:deadie@kennedywilson.com)  
Kawana Springs by Vintage LP, [cdominguez@vintagehousing.com](mailto:cdominguez@vintagehousing.com)  
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City of Santa Rosa, Nick Sudano, [NSudano@srcity.org](mailto:NSudano@srcity.org)  
Army Corps of Engineers, Roberta Morganstern,  
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State Water Resources Control Board, [Stateboard401@waterboards.ca.gov](mailto:Stateboard401@waterboards.ca.gov)  
Jennifer Siu, EPA Wetlands Office, [siu.jennifer@epa.gov](mailto:siu.jennifer@epa.gov)

## Exhibit A: Regulatory Citations

Regulatory Section	Citation
California Water Code Section 13350	“A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).”
California Water Code Section 13385	“A person who violates any of the following shall be liable civilly in accordance with this section: (1) Section 13375 or 13376...(5) A requirement of Section 301...401...of the Federal Clean Water Act...”

Exhibit B: Areas of Impact

