
North Coast Regional Water Quality Control Board

NOTICE OF PUBLIC HEARING AND HEARING PROCEDURES FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R1-2020-0027 AMENDING COMPLAINT R1-2020-0009

ISSUED TO
Sonoma Luxury Resort LLC

Saggio Hills Development Site (a.k.a. Montage Healdsburg)
16840 Healdsburg Avenue, Healdsburg, Sonoma County

SCHEDULED FOR DECEMBER 10/11, 2020

Overview¹

On September 14, 2020, the Assistant Executive Officer of the North Coast Regional Water Quality Control Board (Regional Water Board), issued Administrative Civil Liability Complaint (ACLC) R1-2020-0027 (Complaint), pursuant to California Water Code (Water Code) section 13323, to Sonoma Luxury Resort LLC (hereafter Discharger). The Complaint alleges thirty-eight violations of the Water Code based on evidence that the Discharger failed to implement the requirements of the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities and to meet the conditions of the Clean Water Act Section 401 Water Quality Certification issued to the Discharger, while conducting construction work on the Saggio Hills Development Site, generally located at 16840 Healdsburg Avenue, Healdsburg, California (Site).

The Complaint amends and rescinds ACLC R1-2020-0009 issued on January 21, 2020. The amended Complaint includes three additional unauthorized discharge events under violation 38 and proposes that the Regional Water Board impose an administrative civil liability (ACL) in the amount of Six-Million Four-Hundred and Twenty-Five-Thousand and Six-Hundred and Eighty Dollars (\$6,425,680) as authorized by the Water Code, including section 13385. A hearing is currently scheduled to be held before the Regional Water Board during its December 10/11, 2020 meeting.

Purpose of Hearing

At the hearing, the Regional Water Board will consider relevant evidence and testimony and decide whether to issue an ACL order assessing the proposed liability, or a higher or

¹ This notice includes a typo correction for the deadlines on **September 24, 2020**: Deadline to request Designated Party status. Deadline for Designated Parties to submit any Objections to Hearing Notice. September 24, 2020 is Thursday not Tuesday.

lower amount, or reject the proposed liability. The public hearing will commence as announced in the Regional Water Board's meeting agenda, or as soon thereafter as practical. The meeting may be held "virtually" (e.g., via the Zoom videoconference platform), held at the at the North Coast Regional Water Board office located at 5550 Skylane Boulevard, Suite A, in Santa Rosa, Sonoma County, California, or as announced in the Regional Water Board's agenda. At the public hearing, the Regional Water Board will consider whether to affirm, reject, or modify the Complaint.

Video and Teleconference Meeting During COVID-19 Emergency: As a result of the COVID-19 emergency and the Governor's Executive Orders to protect public health by limiting public gatherings and requiring social distancing, in-person participation for this hearing may be limited. Pursuant to the Governor's Executive Order N-63-20, regulatory agencies may conduct hearings by telephone, television, or other electronic means. Public participation and viewing of this hearing may occur solely via remote presence. Please follow our website at www.waterboards.ca.gov/northcoast for updates.

The agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Water Board's web page at: <http://www.waterboards.ca.gov/northcoast>.

Advisory Team

To ensure a fair hearing, the Regional Water Board staff and attorneys that have issued the Complaint (the Prosecution Team) have been separated from the Regional Water Board staff and attorneys that will provide legal and technical advice to the Regional Water Board (Advisory Team) regarding the adjudication of the Complaint. Members of the Prosecution Team have not communicated with the Regional Water Board nor the Advisory Team regarding any substantive matter at issue in this proceeding. The Prosecution Team is subject to all applicable rules and regulations as any other party to this proceeding, including the prohibition on *ex parte* communications with the Regional Water Board and members of the Advisory Team.

All submittals and communications to the Advisory Team shall be sent to:

Matthias St. John,
Executive Officer
North Coast Regional Water Quality
Control Board
5550 Skylane Blvd. Suite A
Santa Rosa, CA 95043
Matt.St.John@waterboards.ca.gov

Nathan J. Jacobsen. Esq.
Senior Staff Counsel
State Water Resources Control Board
Office of Chief Counsel
1001 I Street
Sacramento, CA 95814
(916) 327-8235
nathan.jacobsen@waterboards.ca.gov

Any substantive communication to the Advisory Team must also be sent to the designated parties listed below.

Hearing Participation

Participants in the hearing on the Complaint are considered either “Designated Parties” or “Interested Persons.”

Designated Parties are the primary participants in the hearing. Designated parties to the hearing may present evidence (e.g., photographs, eye-witness testimony, monitoring data), cross-examine witnesses, and will receive all correspondence related to the case.

Interested Persons are those persons that have an interest in the outcome of the hearing, but who are not the primary participants in the hearing. Interested persons typically include members of the public as well as advocacy groups. Interested Persons may present policy statements but may not generally make objections, offer evidence, conduct cross-examination, or otherwise participate in the evidentiary hearing.

At the hearing, both Designated Parties and Interested Persons may be asked to respond to questions from the Regional Water Board, staff, or others, at the discretion of the Regional Water Board Chair. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but may access hearing documents at the Regional Water Board’s website:

https://www.waterboards.ca.gov/northcoast/public_notices/public_hearings/enforcement_hearings/

Persons who wish to participate in the hearing as a Designated Party may submit a request in writing (with copies to existing Designated Parties) so that it is received by the Advisory Team by the deadline listed below in the section titled Important Deadlines. The request shall include a brief explanation of how the person will be affected by the potential action by the Regional Water Board, the person’s need to present evidence and/or cross-examine witnesses, and why a previously Designated Party will not adequately represent the person’s interest. The parties will be notified whether the request has been granted or denied. If no objection is timely received, and/or the Advisory Team does not otherwise make any modifications, Designated Party status is automatically granted. The new Designated Party shall be added to the list below and will be subject to all the requirements in this Notice. Additional persons may be designated as parties after the deadline at the discretion of the hearing officer, for good cause shown, and subject to appropriate conditions as determined by the hearing officer.

Parties are advised to read and adhere to the attached important deadlines and hearing procedures carefully. Failure to comply with the deadlines and requirements contained herein may result in the exclusion of documents and/or testimony.

The following participants have been designated as Designated Parties in this proceeding:

1. Prosecution Team
2. Sonoma Luxury Resort LLC

Parties

Prosecution Team:

Claudia Villacorta, Assistant Executive Officer
claudia.villacorta@waterboards.ca.gov

Jeremiah Puget, Senior Environmental Scientist
jeremiah.puget@waterboards.ca.gov
Heaven Moore, Senior Water Resource Control Engineer
heaven.moore@waterboards.ca.gov

Diana Henrioulle, Senior Water Resource Control Engineer
diana.henrioulle@waterboards.ca.gov

Heidi Bauer, Senior Engineering Geologist
heidi.m.bauer@waterboards.ca.gov

Joshua Luders, Water Resources Control Engineer
joshua.luders@waterboards.ca.gov

Paul Nelson, Water Resources Control Engineer
paul.nelson@waterboards.ca.gov

Mailing Address:
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Daniel S. Kippen, Esq.,
Senior Staff Counsel
State Water Resources Control Board
Office of Enforcement
801 K Street, 23rd Floor
Sacramento, CA 95814
dan.kippen@waterboards.ca.gov
916-323-6848

Discharger:

Sonoma Luxury Resort LLC
Robert S. Green, Jr.
robert@therobertgreencompany.com

Fred Blum, Esq.
Earl L. Hagström, Esq.
Bassi Edlin Huie & Blum
500 Washington Street, Suite 700
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Important Deadlines

Parties shall provide all submissions electronically. All required submissions must be electronically received by the Advisory Team by 5:00 p.m. on the due date listed. In the event hard copies are being submitted in addition to electronic copies, paper copies of submittals must be received on the due date listed. Due to impacts from COVID-19, most Water Boards employees are currently teleworking, and may not timely receive any hard copy submittals. If a hard copy of a document needs to be submitted, the submitting party should meet and confer with the recipients to coordinate receipt of the such document.

The Advisory Team has discretion to modify the deadlines below and may schedule additional pre-hearing conferences to resolve objections or any other outstanding pre-hearing issues, if needed. Pre-hearing conferences may be held telephonically. All submitted documents will be placed online. If you submit documents containing personal information that you do not wish to be posted on-line, please make such request in a cover letter addressed to the Advisory Team, and include both redacted and unredacted copies of the relevant documents.

Monday, September 14, 2020: Prosecution Team serves Complaint and related documents on Discharger and sends electronic copy to Advisory Team; Prosecution Team posts Hearing Notice and Procedures with copies to Discharger and Advisory Team.

Thursday, September 24, 2020: Deadline to request Designated Party status. Deadline for Designated Parties to submit any Objections to Hearing Notice.

Tuesday, September 29, 2020: Deadline for Designated Parties to submit any Objections to Requests for Designated Party status.

Monday, October 5, 2020: Advisory Team issues decision on any request for Designated Party status and Hearing Notice Objections.

Wednesday, October 14, 2020: Deadline for Discharger to request suspension of hearing date by electing an option in the Waiver Form. Deadline for Designated Parties to request additional time at hearing. Deadline for Interested Persons to submit written statements.

Monday, November 2, 2020: Deadline for Prosecution Team to submit Case in Chief. The Complaint shall be included in the Case in Chief.

Wednesday, November 11, 2020: Deadline for all other Designated Parties, including Discharger, to submit Case in Chief (hard copies not required to be submitted for a hearing held by electronic means (e.g., Zoom)).

Monday, November 23, 2020: Deadline for Designated Parties to submit any rebuttal evidence and written rebuttal to legal argument. Deadline to submit any evidentiary objections.

Deadline for Prosecution Team to provide the Advisory Team a proposed order in electronic format, posted on website, and circulated to all Designated Parties. It is recommended that the proposed order should, to the extent possible, address other Designated Party's submittals and arguments. Deadline for Designated Parties to submit any responses to written statements submitted by Interested Persons.

Thursday or Friday, December 10 or 11, 2020: Adjudicatory Hearing Commences

In the event that the parties agree to postpone the hearing to engage in settlement discussions, the Prosecution Team may withdraw the Hearing Notice. The hearing officer may request that parties appear before the Regional Water Board and provide an update on the status of the case. The Prosecution Team may reissue the Hearing Notice if a hearing is still necessary. In that event, the Prosecution Team shall calculate due dates as if the Complaint was issued 90 days from the new hearing date. Due dates that parties previously met need not be extended.

General Hearing Procedures

The hearing will be conducted in accordance with these Hearing Procedures, approved by the Regional Water Board Chair for the adjudication of enforcement matters. Additionally, the hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Resources Control Board are available upon request or may be viewed at the State Water Resources Control Board's web site: http://www.waterboards.ca.gov/laws_regulations.

Unless otherwise determined by the hearing officer, each Designated Party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call, and examine an adverse party or witness as if under cross-examination. At the discretion of the hearing officer, Designated Parties may also be afforded the opportunity to present closing statements or submit briefs. The Regional Water Board encourages Designated Parties with common interests to work together to make the hearing process more efficient. In addition, Designated Parties are encouraged to stipulate to facts not in dispute, if appropriate. The hearing officer reserves the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

Hearing Time Limits

Each Designated Party shall have a total of **90 minutes** to present evidence (including evidence presented by witnesses called by the Designated Party), cross-examine witnesses (if warranted), and provide an opening and/or closing statement. Participants, including Interested Persons, who would like additional time must submit a request to the Advisory Team by the deadline noted above. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the hearing officer (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments or legal argument require extra time, and why the Designated Party could not adequately provide the testimony, comments or legal argument in the time provided. The hearing officer will consider and may approve any reasonable alternative hearing agenda agreed upon by the Designated Parties if appropriate.

Submission of Evidence

In accordance with California Code of Regulations, title 23, section 648.4, the Regional Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the Designated Parties, the Regional Water Board may exclude evidence and testimony that is not submitted in accordance with these Hearing Procedures. Excluded evidence and testimony will not be considered by the Regional Water Board and will not be included in the administrative record for this proceeding. PowerPoint and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Designated Parties must provide the Advisory Team with a copy of such materials at or before the hearing, for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct and shall be available for cross-examination.

The Prosecution Team and Designated Parties shall submit the following information in writing in advance of the hearing:

1. All legal and technical arguments or analysis.
2. All documentary evidence that the Designated Parties would like the Regional Water Board to consider.
3. The name of each witness, if any, whom the Designated Party intends to call at the hearing, a brief summary of the subject of each witness's proposed testimony, and the estimated time required by each witness to present direct testimony. Alternatively, the testimony of any witness may be presented by declaration, so long as that witness will be available for cross-examination at the hearing. Include the qualifications of any expert witness.

Rebuttal: "Rebuttal" means evidence, analysis, or comments offered to disprove or contradict other Designated Parties' submissions. Rebuttal shall be limited to the scope of the materials previously submitted by the other Designated Parties. Rebuttal information that is not responsive to information previously submitted by other Designated Parties may be excluded by the Advisory Team.

Ex Parte Contacts

Any communication regarding the Complaint that is directed at Regional Water Board members or the Advisory Team by a participant in the hearing and that is not made in a manner open to all other persons is considered an *ex parte* contact. There shall be no *ex parte* communications with Regional Water Board members or the Advisory Team regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to the submission of evidence, briefs, and motions, must demonstrate that all Designated Parties were served and the manner of service.** Designated Parties may accomplish this by submitting a proof of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the persons copied and their addresses in the carbon copy portion of a letter. Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the Advisory Team, not Regional Water Board members. (Gov. Code, § 11430.20, subd. (b).) [A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers"](#) is available upon request or from the State Water Resources Control Board website at: http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

Rules of Evidence

Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Water Board office. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file by the Prosecution Team and will become a part of the administrative record absent a contrary ruling by the Regional Water Board's Chair. Many of these documents are also posted online at: https://www.waterboards.ca.gov/northcoast/board_decisions/

Although the web page is updated regularly, to assure access to the latest information, you may contact the Prosecution Team (contact information above).

Questions

Questions concerning this proceeding may be addressed to the Advisory Team (contact information above).