

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

**[PROPOSED] ORDER NO. R1-2020-0040
for Administrative Civil Liability**

**In the Matter of:
Sonoma Luxury Resort LLC
Saggio Hills Development Project Site (a.k.a. Montage Healdsburg)
16840 Healdsburg Avenue, Healdsburg, CA 95448**

**Administrative Civil Liability Complaint No. R1-2020-0027
Amending Complaint No. R1-2020-0009
WDID NO. 1B06169WNSO (401 Cert)
WDID NO. 1 49C375878 (CGP)**

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds the following:

This matter comes before the Regional Water Board from Administrative Civil Liability Complaint no. R1-2020-0027 dated September 14, 2020, (amending Administrative Civil Liability Complaint no. R1-2020-0009) (Complaint) issued to Sonoma Luxury Resort LLC (Discharger). The Complaint alleged thirty-eight violations based on evidence that Discharger failed to implement the requirements of State Water Resources Control Board (State Water Board) Order No. 2009-0009-DWQ, as amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit or CGP) and meet the conditions of the Clean Water Act Section 401 Water Quality Certification issued to the Discharger (401 Certification) and the Water Quality Control Plan for the North Coast Region (Basin Plan), while conducting construction work as described below, and proposed an administrative civil liability in the amount of \$6,425,680 pursuant to applicable laws and regulations, including California Water Code section 13385. A hearing took place on December 11, 2020, in accordance with the hearing notice and procedures served on Discharger, and applicable laws and regulations, including California Code of Regulations, title 23, sections 648-648.8, as well as applicable orders from the Governor of the State of California.

BACKGROUND

1. The Discharger is constructing a resort and residential homes with structures and associated infrastructure disturbing approximately 65 acres of land on a 258-acre property in the hills in the northern portion of the unincorporated

urban boundary of the City of Healdsburg, in Sonoma County (Site).¹ The Site consists of 43 acres for a 130- room hotel resort, 37 acres for a public park and fire substation, 14.3 acres for 150 units of affordable housing, and 22 acres for construction of 70 privately-owned residences within a 142-acre private open space. Site construction began in May 2016; final stabilization is anticipated in November 2021. The Site contains approximately 3.8 acres of wetlands and other waters of the state and the United States, and the project will permanently fill 2.08 acres of seasonal wetlands and 1,100 linear feet of watercourse.

2. The Regional Water Board is the public agency with primary responsibility for the protection of groundwater and surface water quality for all beneficial uses within the north coast region of the State of California. Storm water runoff from the Site discharges to Foss Creek, and to an unnamed tributary to Jordan Pond, thence to Lytton Creek, both of which are tributary to the Russian River.² The *Water Quality Control Plan for the North Coast Region* (Basin Plan) identifies the following existing and potential beneficial uses for the Middle Russian River Hydrologic Area (Basin Plan, pp. 2-11):
 - a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial service supply
 - d. Industrial process supply
 - e. Groundwater recharge
 - f. Freshwater replenishment
 - g. Navigation
 - h. Hydropower generation
 - i. Water contact recreation
 - j. Non-contact water recreation
 - k. Commercial and sport fishing
 - l. Warm freshwater habitat
 - m. Cold freshwater habitat
 - n. Wildlife habitat
 - o. Rare, threatened, or endangered species
 - p. Migration of aquatic organisms
 - q. Spawning, reproduction, and/or early development
 - r. Aquaculture

¹ The Site is comprised of approximately 60 parcels, and for that reason each assessor's parcel number (APN) is not listed here. For reference purposes, the two largest parcels at the Site are Sonoma County APNs 091-310-001-000 and 091-320-027-000. The Site also include APNs 091-330-043-000 (Woodlands Drive) and 091-320-029-000 (Valley Oak Circle) and the residential lots adjacent to these parcels.

² Lytton Creek is in the Middle Russian River HA, Geyserville HSA, and is identified on the 303(d) list as impaired for sediment / siltation. Foss Creek is in the Middle Russian River HA, Warm Springs HSA, and is identified on the 303(d) list as impaired for sediment/siltation.

3. The Russian River supports a number of aquatic species, including the Coho Salmon, Chinook Salmon, and Steelhead Trout. The Basin Plan contains water quality objectives which are necessary for reasonable protection of the beneficial uses. Protection of fishery beneficial uses (i.e., Cold Freshwater Habitat; Commercial and Sport Fishing; Spawning, Reproduction, and/or Early Development; Rare, Threatened, or Endangered Species; and Migration of Aquatic Organisms) are of particular importance and include the following:
 - Sediment (Section 3.3.11) “The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.”
 - Suspended Material (Section 3.3.12) “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
 - Turbidity (Section 3.3.17) “Turbidity shall not be increased more than 20 percent above naturally occurring background levels.”
4. The Basin Plan (Section 4.2.1) contains the *Action Plan for Logging, Construction, And Associated Activities*, that includes the following waste discharge prohibitions:
 - “The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.”
 - “The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”
5. The federal Clean Water Act section 303(d) list identifies the Russian River and all its tributaries as impaired due to sediment and temperature.

On November 29, 2004, the Regional Water Board adopted the *Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters in the North Coast Region* (Sediment TMDL Implementation Policy) by Resolution R1-2004-0087. The goals of the Policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment.

The Sediment TMDL Implementation Policy states that the Executive Officer is directed to “rely on the use of all available authorities, including the existing regulatory standards, and permitting and enforcement tools to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste.”

6. On December 5, 2008, the Regional Water Board issued a 401 Certification to the Discharger for dredge and fill to waters of the United States associated with Site development.³ The 401 Certification contains project-specific requirements to avoid, minimize, and mitigate temporary and permanent impacts caused by project activities, including requirements for monitoring and reporting, implementation of best management practices (BMPs), implementation of the project as described in the application for certification, cessation of project activities in the event of an unauthorized discharge or water quality problem, and compliance with applicable requirements of the Basin Plan.
7. On April 4, 2016, the Discharger obtained coverage for the Site, as a Risk Level 3 site, under the CGP. The CGP requires implementation of Best Available Treatment Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or eliminate pollutants in storm water runoff. Furthermore, the CGP has requirements for storm water runoff monitoring and reporting, implementation of BMPs, bioassessment monitoring and reporting, low impact development, and compliance with applicable requirements of the Basin Plan.
8. Beginning on October 3, 2018, Regional Water Board staff observed numerous violations of the CGP and 401 Certification at the Site. Attachment A provides the details of these violations. Below is a summary of each alleged violation. Generally speaking, it is important to note that the violations caused significant deposition of fine sediment in receiving waters that support a habitat for a number of aquatic species including endangered salmonids. Fine sediment in Site receiving waters caused elevated turbidity. Turbidity, if chronic, can affect respiration through damage to and interference with the gills of fish and macro-invertebrates, affecting overall physiological health of aquatic species.

VIOLATIONS

9. **Violations 1, 9, 15, 18, 25, and 31:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section, B.5.e by failing to ensure effectiveness of existing BMPs to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges on October 3, 2018 (Violation 1), November 29 through December 4, 2018 (Violation 9), January 7, 2019 (Violation 15), January 18, 2019 (Violation 18), February 1, 2019 (Violation 25), and February 4, 2019 (Violation 31).

³ Amended on September 30, 2013, and December 6, 2018.

10. **Violations 2, 10, 16, 19, 26, and 32:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section D.2 by failing to provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots on October 3, 2018 (Violation 2), November 29 through December 4, 2018 (Violation 10), January 7, 2019 (Violation 16), January 18, 2019 (Violation 19), February 1, 2019 (Violation 26), and February 4, 2019 (Violation 32).
11. **Violations 3, 11, 20, 27, and 33:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section E.1 by failing to have effective perimeter controls and failing to stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the Site on October 3, 2018 (Violation 3), November 29 through December 4, 2018 (Violation 11), January 18, 2019 (Violation 20), February 1, 2019 (Violation 27), and February 4, 2019 (Violation 33).
12. **Violations 4, 13, 21, 29, and 35:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section E.4 by failing to have adequate or effective linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow lengths on October 3, 2018 (Violation 4), November 29 through December 4, 2018 (Violation 13), January 18, 2019 (Violation 21), February 1, 2019 (Violation 29), and February 4, 2019 (Violation 35).
13. **Violations 5, 14, 22, 30, and 36:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section F by failing to effectively manage all run-on, all runoff within the Site and all runoff that discharges off the Site on October 3, 2018 (Violation 5), November 29 through December 4, 2018 (Violation 14), January 18, 2019 (Violation 22), February 1, 2019 (Violation 30), and February 4, 2019 (Violation 36).
14. **Violations 6, 17, and 23:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section B.1.b by failing to cover and berm loose stockpiled construction materials that are not actively being used at the Site on November 29, 2018 (Violation 6), January 18, 2019 (Violation 17), and February 1, 2019 (Violation 23).
15. **Violations 7 and 24:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section B.2.d by failing to cover waste disposal containers at the Site during rain events on November 29, 2018 (Violation 7) and February 1, 2019 (Violation 24).

16. **Violation 8:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section B.1.c by failing to properly store chemicals in watertight containers or in a storage shed at the Site on November 29, 2018 (Violation 8).
17. **Violations 12, 28, and 34:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section E.3 by failing to implement appropriate erosion control BMPs in conjunction with sediment control BMPs for areas under active construction on November 29 through December 4, 2018 (Violation 12), February 1, 2019 (Violation 28), and February 4, 2019 (Violation 34).
18. **Violation 37:** The Prosecution Team alleges that the Discharger violated CGP Section VI.C and Basin Plan Section 3.3.17 by discharges from the Site which resulted in turbidity increases of more than 20% above background in receiving waters on 33 days between November 29, 2018 and May 19, 2019.
19. **Violation 38:** The Prosecution Team alleges that the Discharger violated CGP Section III.A, CGP Section III.B, and 401 Certification Condition 7 through the unauthorized discharge of approximately 9.4⁴ million gallons of sediment-laden storm water from the Site on September 30 - October 1, 2018, November 20-24, 2018, November 27-29, 2018, February 1-2, 2019, and May 16, and 18-19, 2019.

LEGAL AND REGULATORY CONSIDERATIONS

20. The CGP was issued pursuant to Clean Water Act section 402 and implementing regulations adopted by the US EPA and chapter 5.5, division 7 of the Water Code (commencing with section 13370), including Water Code section 13376. The General Permit serves as an NPDES permit for discharges of stormwater runoff from the Site.
21. The 401 Certification was issued pursuant to Clean Water Act 401 and Water Code section 13160 and certifies that the project, as approved by the U.S. Army Corps of Engineers pursuant to Clean Water Act section 404, will also meet state water quality requirements if certain conditions are met.

⁴ Regional Water Board staff took a conservative approach in assessing liability on the volume of unauthorized storm water discharged to surface waters by excluding the run-on from the Sonoma County Landfill property and rounding down the total estimated volume of discharge for each storm event. The actual estimated gallons of unauthorized storm water discharged to surface waters from Road 4, Passalacqua Road, and the Resort tributary were as follows: 1) Sept 30 / Oct 1, 2018: 909,309; 2) Nov 22-24, 2018: 2,262,640; 3) Nov 27-29, 2018: 2,262,640; 4) Feb 1-2, 2019, 2018: 2,262,640; 5) May 16, 2019: 1,637,587; 6) May 18-19, 2019: 295,621.

WATER CODE AUTHORITY FOR IMPOSING ADMINISTRATIVE CIVIL LIABILITY

22. Water Code section 13385 states, in relevant part:

(a) A person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376. ...

(4) An order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(5) A requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1341, or 1345), as amended. ...

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(e) In determining the amount of any liability imposed under this section, the regional water board shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

WATER QUALITY ENFORCEMENT POLICY

23. On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020, which adopted the 2017 Water Quality Enforcement Policy (2017 Enforcement Policy). The 2017 Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017. The 2017 Enforcement Policy establishes a methodology for assessing administrative civil liability that addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13385, subdivision (e). The entire 2017 Enforcement Policy can be found at: https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf
24. The violations alleged are subject to liability in accordance with Water Code section 13385.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

25. The Complaint proposes an administrative civil liability of **\$6,425,680** for Violations 1-38, as detailed in Attachment A to the Complaint. This proposed administrative civil liability was derived from the use of the penalty methodology in the 2017 Enforcement Policy. The proposed administrative civil liability takes into account the factors described in Water Code section 13385, subdivision (e) and Water Code section 13327, such as the Discharger's culpability, history of violations, ability to pay, and other factors as justice may require.

MAXIMUM STATUTORY LIABILITY

26. Pursuant to Water Code section 13385, subdivision (c), the statutory maximum administrative civil liability for each violation in Violations 1-38 is \$10,000 per day of violation, plus \$10 for each gallon discharged and not cleaned up in excess of 1,000 gallons.
27. Violations 1, 9, 15, 18, 25, and 31 describe the Discharger's failure to ensure effectiveness of existing BMPs to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges on October 3, 2018 (Violation 1), November 29 through December 4, 2018 (Violation 9), January 7, 2019 (Violation 15), January 18, 2019 (Violation 18), February 1, 2019 (Violation 25), and February 4, 2019 (Violation 31). The statutory maximum liability for Violations 1, 9, 15, 18, 25, and 31 is \$60,000 [(\$10,000/day) x 6 days].
28. Violations 2, 10, 16, 19, 26, and 32 describe the Discharger's failure to provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots on October 3, 2018 (Violation 2), November 29

through December 4, 2018 (Violation 10), January 7, 2019 (Violation 16), January 18, 2019 (Violation 19), February 1, 2019 (Violation 26), and February 4, 2019 (Violation 32). The statutory maximum liability for Violations 2, 10, 16, 19, 26, and 32 is \$60,000 [(\$10,000/day) x 6 days].

29. Violations 3, 11, 20, 27, and 33 describe the Discharger's failure to have effective perimeter controls and failing to stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the Site on October 3, 2018 (Violation 3), November 29 through December 4, 2018 (Violation 11), January 18, 2019 (Violation 20), February 1, 2019 (Violation 27), and February 4, 2019 (Violation 33). The statutory maximum liability for Violations 3, 11, 20, 27, and 33 is \$50,000 [(\$10,000/day) x 5 days].
30. Violations 4, 13, 21, 29, and 35 describe the Discharger's failure to have adequate or effective linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow lengths on October 3, 2018 (Violation 4), November 29 through December 4, 2018 (Violation 13), January 18, 2019 (Violation 21), February 1, 2019 (Violation 29), and February 4, 2019 (Violation 35). The statutory maximum liability for Violations 4, 13, 21, 29, and 35 is \$50,000 [(\$10,000/day) x 5 days].
31. Violations 5, 14, 22, 30, and 36 describe the Discharger's failure to effectively manage all run-on, all runoff within the Site and all runoff that discharges off the Site on October 3, 2018 (Violation 5), November 29 through December 4, 2018 (Violation 14), January 18, 2019 (Violation 22), February 1, 2019 (Violation 30), and February 4, 2019 (Violation 36). The statutory maximum liability for Violations 5, 14, 22, 30, and 36 is \$50,000 [(\$10,000/day) x 5 days].
32. Violations 6, 17, and 23 describe the Discharger's failure to cover and berm loose stockpiled construction materials that are not actively being used at the Site on November 29, 2018 (Violation 6), January 18, 2019 (Violation 17), and February 1, 2019 (Violation 23). The statutory maximum liability for Violations 6, 17, and 23 is \$30,000 [(\$10,000/day) x 3 days].
33. Violations 7 and 24 describe the Discharger's failure to cover waste disposal containers at the Site during rain events on November 29, 2018 (Violation 7) and February 1, 2019 (Violation 24). The statutory maximum liability for Violations 7 and 24 is \$20,000 [(\$10,000/day) x 2 days].
34. Violation 8 describes the Discharger's failure to properly store chemicals in watertight containers or in a storage shed at the Site on November 29, 2018 (Violation 8). The statutory maximum liability for Violation 8 is \$10,000 [(\$10,000/day) x 1 day].

35. Violations 12, 28, and 34 describe the Discharger's failure to implement appropriate erosion control BMPs in conjunction with sediment control BMPs for areas under active construction on November 29 through December 4, 2018 (Violation 12), February 1, 2019 (Violation 28), and February 4, 2019 (Violation 34). The statutory maximum liability for Violations 12, 28, and 34 is \$30,000 [(\$10,000/day) x 3 days].
36. Violation 37 describes the Discharger's failure to prevent discharges from the Site resulting in turbidity increases of more than 20% above background in receiving waters on 33 days between November 29, 2018 and May 19, 2019. The statutory maximum liability for Violation 37 is \$330,000 [(\$10,000) x 33 days].
37. Violation 38 describes the Discharger's failure to prevent unauthorized discharges of 9.4 million gallons of sediment-laden storm water from the Site on September 30-October 1, 2018, November 20-24, 2018, November 27-29, 2018, February 1-2, 2019, and May 16 and 18-19, 2019. The statutory maximum liability for Violation 38 is [(\$10,000/per day) x 15 days] + [\$10 x (9,395,000 gallons-6,000 gallons)] = \$94,040,000.

MINIMUM LIABILITY

38. Water Code section 13385, subdivision (e), requires that when pursuing civil liability under section 13385, "[a]t a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation." The 2017 Enforcement Policy further requires the Regional Water Board to recover, at a minimum, the economic benefit plus 10%. The economic benefit for the violations alleged is approximately \$397,881. Attachment A includes a detailed explanation of the basis of this calculation. The minimum liability that may be imposed is the economic benefit plus 10%, which is equal to \$437,670. The administrative civil liability is more than the minimum liability amount.

ADMINISTRATIVE CIVIL LIABILITY

39. Based on consideration of the above facts, the evidence in this matter, material submitted by the parties, the testimony and arguments presented at hearing, the applicable law, and after applying the methodology in the Enforcement Policy, the Regional Water Board finds that civil liability shall be imposed administratively against the Discharger in the amount of \$6,425,680, as explained in detail in Attachment A to this Order.
40. Notwithstanding the issuance of this Order, the Regional Water Board retains the authority to assess additional penalties for violations for which penalties have not yet been assessed or for violations that may subsequently occur.

41. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filling petitions will be provided upon request, and may be found on the Internet at:
http://www.waterboards.ca.gov/public_notices/petitions/water_quality/

IT IS HEREBY ORDERED, pursuant to Water Code section 13385 and other applicable law, that:

1. Sonoma Luxury Resort LLC shall be assessed an Administrative Civil Liability in the amount of six-million, four-hundred twenty-five thousand, six-hundred and eighty dollars (\$6,425,680).
2. Payment shall be made no later than 30 days from the date on which this Order is adopted. Sonoma Luxury Resort LLC shall send the original signed check to:

State Water Resources Control Board
Division of Administrative Services
ATTN: Accounting
1001 I Street, 18th Floor
Sacramento, CA 95814

and shall send a copy to:

North Coast Regional Water Quality Control Board
Attn: Jeremiah Puget
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403.

I, Matthias St. John, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on December 11, 2020.

Matthias St. John
Executive Officer

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ATTACHMENT A