Attachment C

Conditional Offer to Settle and Proof of Service

July 24, 2019: Conditional Offer to Settle Reporting Violation of Construction Stormwater General Permit

Proof of Service

July 24, 2019
WDID: 2 41C374988 (JHX)

Stay Cal HMB LLC
Attention: Hiten Suraj
2110 South El Camino Real
San Mateo, CA 94403

Subject: Conditional Offer to Settle Reporting Violation of Construction Stormwater General Permit

Facility: Camerons Best Western Inn Half Moon Bay located at 1410 Cabrillo Hwy S, Half Moon Bay, CA 94019

To Construction Stormwater Discharger:

This is a conditional offer to settle an alleged reporting violation for a mandatory minimum penalty of $1,000. The Construction Stormwater General Permit[1] requires an annual report to be submitted by September 1st following each reporting year. We did not receive an annual report for the 2017/2018 reporting year by September 1, 2018. We sent two notices of noncompliance and did not receive the report by the deadlines in those notices. The California Water Code now requires the Water Board to impose a mandatory penalty. The Water Board is extending this offer to settle for the minimum penalty required by statute. To avoid further enforcement, sign and submit the "Acceptance of Conditional Resolution and Waiver of Right to Hearing" included below by August 23, 2019, and agree to pay the mandatory minimum penalty of $1,000.

Acceptance of this conditional offer will settle the alleged reporting violation for the minimum penalty required by statute. By settling, there will be no additional costs to you, including costs we could recover by bringing this matter to a hearing before the Water Board. In addition, we will not pursue discretionary enforcement to seek a higher penalty of up to $10,000 per day of violation under Water Code section 13385. The remainder of this conditional offer letter further explains the alleged violation, statutory liability, and how to respond (i.e., accept the offer, contest the alleged violation, or reject the offer).

This conditional offer does not address any violation not specifically identified above.

[1] General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System (NPDES) No. CAS000002

ALLEGED VIOLATION AND NOTICES OF NONCOMPLIANCE

Camerons Best Western Inn Half Moon Bay (Discharger) violated section XVI of the Construction Stormwater General Permit by failing to submit an annual report for the 2017/2018 reporting year by September 1, 2018. The Water Board sent notices of noncompliance as required by Water Code section 13399.31 on October 31, 2018, and February 13, 2019. The Discharger failed to submit the annual report by the deadlines in those notices of noncompliance.

STATUTORY LIABILITY

Water Code sections 13399.31 and 13399.33 require the Water Board to impose an administrative civil liability (a fine) in an amount not less than $1,000 when a facility fails to submit an annual report after receiving two notifications. Water Code section 13399.31(b) requires the Water Board to notify the Discharger of its noncompliance first. If a response is not received within 30 days, Water Code section 13399.31(c) requires the Water Board to send a second notice of noncompliance before assessing a penalty. If the Discharger fails to certify and submit an annual report via the State Board's Stormwater Multiple Application and Report Tracking System (SMARTS) within 60 days from the date of the first notice of noncompliance, Water Code section 13399.31(d) requires the Water Board to impose a $1,000 penalty as described in Water Code section 13399.33(c) and recover the costs the Water Board incurred to enforce the permit. Through settlement of this violation as discussed below, no additional costs will be assessed.

If the violation is not settled as discussed below, we may pursue discretionary penalties under Water Code sections 13385(a)(2) and 13385(c)(1), where administrative civil liabilities may be as high as $10,000 for each day in which the violation occurs, beginning from the date the violation first occurred. Alternatively, we may refer the matter to the Office of the Attorney General for prosecution and seek up to $25,000 per violation per day pursuant to Water Code section 13385(b)(1).

CONDITIONAL OFFER TO SETTLE

As explained below, the Discharger has three options for responding to this conditional offer. The Discharger can avoid a hearing before the Water Board and the possibility of discretionary penalties by accepting this conditional offer and paying $1,000 as explained under Choice A. More details about the terms of this option are included in the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing" (Acceptance and Waiver).

- **Choice A – Accept the Offer**

  If the Discharger accepts this conditional offer, then complete and return the Acceptance and Waiver (enclosed) on or before August 23, 2019, to the following:

  San Francisco Bay Regional Water Board
  Attention: Jerry Xu
  1515 Clay Street, Suite 1400
  Oakland, CA 94612
  or
  jerry.xu@waterboards.ca.gov

When we receive the signed Acceptance and Waiver, this offer will become a proposed settlement and part of publicly available Water Board files. We will post the Acceptance and Waiver publicly for 30 days for comments. Based on the content of any comments received, the Executive Officer will decide whether to accept this proposed settlement. If acceptable, the Executive Officer will sign the Acceptance and Waiver and an email will be sent to the Discharger as an invoice for payment within 30 days. This process is discussed further below under "Conditions for Water Board Acceptance of Resolution."

- **Choice B – Contest the Alleged Violation**

  If the Discharger wishes to contest the alleged violation, we must receive the challenge by August 23, 2019. To contest, please identify in writing, and send to the address above, the basis for the challenge (factual error, affirmative defense, etc.). We will evaluate the contested violation and take one of two actions:

  1) Determine that the alleged violation is not supported, take no further action against the Discharger for the alleged violation, and notify the Discharger of that determination; or
  2) Determine that the alleged violation has merit and notify the Discharger of that determination. The Discharger will then have 15 days from the date of the determination to accept the conditional offer. If the Discharger chooses not to accept, or does not reply to the determination, the Discharger should expect an enforcement investigation and further action as described under Choice C.

- **Choice C – Reject the Offer**

  If the Discharger chooses to reject this conditional offer or does not complete and return the Acceptance and Waiver by the deadline, we will pursue additional enforcement including discretionary enforcement, and the Discharger will receive notice of that action. In pursuing additional enforcement, we will conduct a more thorough investigation and potentially use information from the investigation to address additional violations. We will also seek to recover staff costs associated with the issuance of an Administrative Civil Liability Complaint. Therefore, penalties may be significantly greater than the mandatory minimum liability set forth in this conditional offer.

CONDITIONS FOR WATER BOARD ACCEPTANCE OF RESOLUTION

Federal regulations require the Water Board to publish and allow the public at least 30 days to comment on any settlement of an enforcement action addressing a violation (40 C.F.R. § 123.27(d)(2)(iii)). Upon receipt of the Discharger's Acceptance and Waiver, we will publish a notice of the proposed settlement of the violation.

If we receive no comments within the 30-day period and there are no new material facts available, we will ask the Executive Officer to execute the Acceptance and Waiver as a stipulated order assessing the uncontested penalty amount pursuant to Water Code section 13399.33.

If significant comments are received in opposition to the proposed settlement, this offer may be withdrawn. In that case, we will also treat as withdrawn the Acceptance and Waiver and address the alleged violation in a formal liability assessment proceeding. At the liability assessment

hearing, the Discharger will be free to make arguments as to the alleged violation. Acceptance of this conditional offer will not in any way be binding or used as evidence against the Discharger. The Discharger will be provided with further information on the liability assessment proceeding under such circumstances.

If the Executive Officer executes the Acceptance and Waiver, payment shall be due to the Waste Discharge Permit Fund within 30 calendar days in accordance with Water Code sections 13399.37(a) and 13399.33. Failure to pay in full by the required deadline may subject the Discharger to further liability.

OPPORTUNITY FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT

In lieu of paying the entire settlement amount to the Waste Discharge Permit Fund, the Discharger may elect to apply 50 percent of the penalty to fund a supplemental environmental project.[2] This option is discussed in the enclosed Acceptance and Waiver.

There is currently only one option for funding a supplemental environmental project: a fund to supplement the Regional Monitoring Program.[3] The Regional Monitoring Program collects data and communicates information about water quality in the San Francisco Estuary in support of management decisions to restore and protect the region's waters. Regional Monitoring Program funds are managed and administered by the non-profit San Francisco Estuary Institute. More information about the Regional Monitoring Program is available at http://www.sfei.org/rmp. The funding would supplement water quality studies that would not otherwise be conducted through the Regional Monitoring Program's annually approved cost allocations. No funds would go to the Water Board.

WATER BOARD CONTACT

If you want to discuss or have questions regarding this matter, please contact Jerry Xu at (510) 622-2469 or Jerry.Xu@waterboards.ca.gov

Sincerely,

Thomas Mumley
Assistant Executive Officer

Enclosures: (1) Acceptance and Waiver
(2) Notices of Noncompliance

[2] Pursuant to the Policy on Supplemental Environmental Projects (2017) (https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/seps/20180503_sep_policy_amd.pdf), up to 50 percent of the penalty may be applied to a supplemental environmental project.

[3] See State Water Board Resolution No. 2017-0074 (https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/rs2017_0074.pdf).

ORDER NO.

ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING
for
Camerons Best Western Inn Half Moon Bay
1410 Cabrillo Hwy S, Half Moon Bay, CA 94019

ALLEGED VIOLATION AND NOTICES OF VIOLATION

Camerons Best Western Inn Half Moon Bay (Discharger) violated section XVI of the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*, Order No. 2009-0009-DWQ, NPDES No. CAS000002 (Construction Stormwater General Permit), by failing to submit an annual report for the 2017/2018 reporting year by September 1, 2018. As required by California Water Code (Water Code) section 13399.31, the San Francisco Bay Regional Water Quality Control Board (Water Board) issued notices of noncompliance to the Discharger on October 31, 2018, and February 13, 2019. By statute, the Discharger is now subject to a minimum penalty of $1,000 for failing to submit the annual report by the deadlines established in the notices of noncompliance.

ACCEPTANCE AND WAIVER

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Water Board, the Discharger hereby accepts the conditional offer to settle the alleged violation through payment of mandatory minimum penalties and waives its right to a hearing before the Water Board to dispute the alleged violation.

The Discharger agrees that the conditional offer (enclosed with this Acceptance and Waiver) shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Water Board to assert jurisdiction over the alleged violation. The Discharger agrees to pay the penalties authorized by Water Code section 13399.33, which shall be deemed payment in full of any civil liability pursuant to Water Code section 13399.31 that otherwise might be assessed for the violation described above. The Discharger understands that this Acceptance and Waiver waives its right to contest the alleged violation and the amount of civil liability for the violation.

The Discharger understands that this Acceptance and Waiver does not address or resolve liability for any violation not specifically identified herein. Upon execution by the Discharger, the Acceptance and Waiver shall be returned to the following:

San Francisco Bay Regional Water Board
Attention: Jerry Xu
1515 Clay Street, Suite 1400
Oakland, CA 94612
or
jerry.xu@waterboards.ca.gov

The Discharger understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii), require the Water Board to publish notice of, and provide at

least 30 days for, public comment on any proposed resolution of an enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Executive Officer of the Water Board, will be published for public comment as required by law.

If no comments are received within the notice period that cause the Executive Officer to reject the settlement, the Executive Officer may execute the Acceptance and Waiver. Water Board resolution of this violation will preclude State Water Resources Control Board action for the same violations.

The Discharger understands that, if significant comments are received in opposition to the conditional offer, the offer may be withdrawn. In that circumstance, the Discharger will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Water Board or State Water Resources Control Board. For such a liability hearing, the Discharger understands that this Acceptance and Waiver will be treated as if it were a settlement communication and will not be used as evidence in that hearing.

The Discharger understands that funds collected for violations pursuant to Water Code section 13399.31 shall be deposited in the Waste Discharge Permit Fund. The discharger has the option to contribute half of the funds to a supplemental environmental project instead by checking (placing a "✓" or "✗" into) the box below. Selecting this option does not change the total amount the Discharger must pay.

☐ The Discharger agrees to pay half the penalty ($500) to a supplemental environmental project.

Payment Option
Contribute to a Supplemental Environmental Project

By checking the box above, **$500** of the $1,000 penalty will go to a supplemental environmental project for the San Francisco Estuary Institute to fund Regional Monitoring Program studies within the San Francisco Bay estuary; the remaining **$500** will go to the State Waste Discharge Permit Fund.

By not checking the box above, the entire **$1,000** penalty will go to the State Waste Discharge Permit Fund.

If the Discharger directs funds to the supplemental environmental project, the Water Board will consider the Discharger to have fulfilled its obligation for the supplemental environmental project when the San Francisco Estuary Institute receives the funds.

The Discharger understands that once the Executive Officer of the Water Board executes the Acceptance and Waiver, payment no later than 30 days after the date of the Executive Officer's signature is a condition of this Acceptance and Waiver. If the Discharger does not select the supplemental environmental project option above, the Discharger shall pay the total assessed civil liability in full to the Waste Discharge Permit Fund. If the Discharger selects the supplemental environmental project option, the Discharger shall pay the portion not paid toward the supplemental environmental project to the Waste Discharge Permit Fund and pay the balance to the San Francisco Estuary Institute for the Regional Monitoring Program.

Please do not send a check for payment with this Acceptance and Waiver. After posting for public comment for 30 days, if the Executive Officer finds this Acceptance and Waiver acceptable, the Executive Officer will counter-sign the Acceptance and Waiver and send an email as an invoice for payment to the Discharger for payment within 30 days.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this Acceptance and Waiver.

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Camerons Best Western Inn Half Moon Bay

By:_____ _____

Printed or typed name Title

_____ _____

Signature Date

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IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13399.31

By: _____ _____

Michael Montgomery Date
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

USPS Tracking®

FAQs >

Track Another Package +

Tracking Number: 70181830000021320161

Remove ×

Your item was delivered to an individual at the address at 10:52 am on July 25, 2019 in SAN MATEO, CA 94403.

Feedback

Delivered

July 25, 2019 at 10:52 am
Delivered, Left with Individual
SAN MATEO, CA 94403

Tracking History

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UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box•

Jerry Xu
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St, Suite 1400
Oakland, Ca 94612

San Francisco Bay
AUG 01 2019
Water Quality Control Board

USPS TRACKING#

9590 9403 0198 5077 2875 53

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Stay Cal HMB LLC
Attention: Hiten Suraj
2110 South El Camino Real
San Mateo, CA 94403

9590 9403 0136 5077 2875 53

2. Article Number *(Transfer from service label)*

7018 1830 0000 2132 0161

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature
☐ Adult Signature Restricted Delivery
☑ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
Insured Mail Restricted Delivery (over $500)

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☑ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PS Form 3811, April 2015 PSN 7530-02-000-9053 Domestic Return Receipt

7017 0530 0000 7825 3211

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at *www.usps.com*®.

OFFICIAL USE

Certified Mail Fee
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Extra Ser
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- ☐ Return
- ☐ Certifi
- ☐ Adult
- ☐ Adult

Postage
$

Total Po.
$

Stay Cal HMB LLC
Attn: Hiten Suraj
2110 South El Camino Real
San Mateo, California 94403

Sent To

Street and Apt. No., or PO Box No.

City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions