

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of: Kent Hoggan, Frostwood 6, LLC, and David Jacobsen, Respondents	Docket No. CWA-08-2107-0026
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RESPONDENT KENT HOGGAN'S INITIAL PREHEARING EXCHANGE

Respondent, Kent Hoggan ("Hoggan") respectfully submits his Initial Prehearing Exchange pursuant to Rule 22.19(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.19(a), and the Prehearing Order of Presiding Officer Susan L. Biro, dated July 5, 2018.

I. FACT AND EXPERT WITNESSES AND BRIEF NARRATIVE SUMMARY OF EXPECTED TESTIMONY

Witnesses

Kent Hoggan. All aspects of the Complainant's Complaint and all of the Respondents' claims and defenses.

David Jacobsen. All aspects of the Complainant's Complaint and all of the Respondent's claims and defenses.

Hal Rosen. Mr. Hoggan's CPA for his personal taxes and for the Hoggan LLC tax returns. Has information relative to Mr. Hoggan's ability to pay.

Representative of PCG. A lender on Mr. Hoggan's projects and has information as to up-side-down status of Mr. Hoggan's projects.

Representative of Cambia. A lender on Mr. Hoggan's projects and has information as to up-side-down status of Mr. Hoggan's projects.

II. EXHIBITS RESPONDENT INTENDS TO INTRODUCE INTO EVIDENCE AT THE HEARING

Respondent intends to introduce at hearing the exhibits listed and numbered below:

Respondent's Exhibit No.	Document	Number of Pages
1	SWPP Inspection Log (part 1)	23
2	SWPP Inspection Log (part 2)	22
3	SWPP Inspection Log (part 3)	23
4	SWPP Inspection Log (part 4)	21
5	SWPP Inspection Log (part 5)	12
6	SWPP Inspection Log (part 6)	45
7	SWPP Inspection Log (part 7)	48
8	David (Jake) Jacobsen's Report of Corrective Actions Taken Regarding EPA Appendix A Findings	22
9	Kent Hoggan's Responses to EPA's Questions Regarding Ability to Pay	27
10	Hoggan LLC Financials	13
11	Frostwood 6, LLC Operating Agreement	16
12	Fairway 20, LLC Operating Agreement	16
13	Tavaci 3, LLC Operating Agreement	16
14	2014 Kent Hoggan 1040 Tax Return	23
15	2015 Kent Hoggan 1040 Tax Return	17
16	2016 Kent Hoggan 1040 Tax Return	25
17	2017 Kent Hoggan 1040 Tax Return (submitted later)	
18	2015 Frostwood 6 LLC Signed 8879	1
19	2015 Frostwood 6 LLC 1065 Tax Return	19
20	2016 Frostwood 6 LLC Signed 8879	1
21	2016 Frostwood 6 LLC 1065 Tax Return	21
22	2017 Frostwood 6 LLC 1065 Tax Return	15
23	2015 Fairway 20 LLC Signed 8879	1
24	2015 Fairway 20 LLC 1065 Tax Return	19
25	2016 Fairway 20 LLC Signed 8879	1
26	2016 Fairway 20 LLC 1065 Tax Return	22
27	2017 Fairway 20 LLC 1065 Tax Return Schedules	10

28	2015 Tavaci 3 LLC Signed 8879	1
29	2015 Tavaci 3 LLC 1065 Tax Return	18
30	2016 Tavaci 3 LLC Signed 8879	1
31	2016 Tavaci 3 LLC 1065 Tax Return	19
32	2017 Tavaci 3 LLC 1065 Tax Return	14
33	2017 House I LLC 1065 Tax Return	10
34	Fairway 20 LD2 Promissory Note	12
35	Fairway 20 LD3 Deed of Trust	31
36	Fairway 20 LD4b Interest Holdback	6
37	Fairway 20 Building G Refi	2
38	Fairway 20 Building H Refi	2
39	Fairway 20 LD6 Kent Hoggan Personal Guaranty	20
40	Fairway 20 LD7 Security Agreement	15
41	Fairway 20 Cambia Signed Settlement Agreement & Release	3
42	Two Creeks Spec Home First Amendment to Loan Agreement	6
43	Two Creeks Spec Home Deed of Trust	41
44	Two Creeks Spec Home Allonge to Note	6
45	Frostwood 6 Lender Default Letter	1
46	Fairway Springs Cambia Amended Trust Deed	12
47	PCG Default Letter	1
48	Foreclosure Emails re 3799 E Catamount Ridge Home	3
49	IRS \$5 Million Judgment Against Kent Hoggan	2
50	Meister \$5.5 Million Judgment Against Kent Hoggan	4
51	Fairway 20 LD4a Construction Holdback	31
52	Mory Morrison Buyer's Settlement Statement	2
53	Rocklin Settlement Statement	1
54	Frostwood 3.29.17 Loan Settlement Statement	12
55	2016.12.7 Frostwood 6 Global Amendment w Paydown Provision	7
56	2016.12.7 Frostwood 6 Environmental Indemnification	8
57	2016.12.7 Frostwood 6, Guaranty	9
58	2016.12.7 Frostwood 6 Loan Agreement	16
59	2016.12.7 Frostwood 6 Promissory Note	5
60	2016.12.7 Frostwood 6 Trust Deed	6
61	2017.2.28 Sundance Loan Statement Frostwood 6	2
62	2017.3.22 Sundance email re Frostwood Feb Loan Statements	1
63	156 Frostwood 6 Loan Closing statement	2
64	2015.11.12 Frostwood 6 SDB Funding Loan Closing Docs	104
65	Frostwood Original Purchase Loan Closing Docs	41
66	BRELF Loan Closing Statement-paid off PCG Loan	2
67	BRELF 1 st loan part 1	88

68	BRELF 1 st loan part 2	58
69	BRELF 2 nd closing docs part 1	88
70	BRELF 2 nd closing docs part 2	81
71	2018.1.3 Frostwood Closing Docs	462

III. TIME TO PRESENT CASE AND TRANSLATION SERVICES

Respondent’s preferred hearing location is Salt Lake City, Utah. Respondent estimates that the direct case will take two days. Respondent needs no translation services.

IV. DOCUMENTATION OF SERVICE

Not applicable to Respondent.

V. NARRATIVE STATEMENT EXPLAINING ALLEGATIONS/DEFENSES

Respondent included summaries of witness testimony and exhibits to support the factual and legal bases for Respondent’s denial of the Complaint Allegations. Most of the alleged violations, if any, were very minor and all necessary steps to correct the same were promptly taken. Respondent further challenges the jurisdiction, and any factual basis for contending that water discharge from the site entered into any US waterway. Respondent further contends he has no ability to pay more than an offered \$5,000.00 amount.

Respondent acknowledges that the parties have stipulated to the fact that Complaint ¶ 12 contains a typographical error and should read “EPA regulations state regulated storm water discharges include discharges from small construction activity. 40 C.F.R. § 122.26(a)(9)(i)(B).”

Respondent acknowledges that Answer ¶ 54 contains a typographical error, and the parties stipulate that Answer ¶ 54 should say Respondents did not accept the Expedited Settlement Agreement.

VI. INFORMATION AND DOCUMENTATION SUPPORTING PENALTIES

Respondent disputes that any penalties are proper in the factual circumstances of this case, under the relevant penalties factors. Respondent further asserts an absolute inability to pay any significant penalty in this matter based upon exhibits and testimony that will be presented.

VII. GUIDANCE, POLICIES AND PREAMBLES

Respondent will also rely upon the agency guidance documents listed in Section VII to Complainant's Initial Pretrial Exchange, particularly the ability to pay guidance which applied properly will result in a finding of an inability to pay on Mr. Hoggan's part.

VIII. PROOF OF PUBLIC NOTICE

See Section VIII in Complainant's Initial Pretrial Exchange.

IX. PAPERWORK REDUCTION ACT

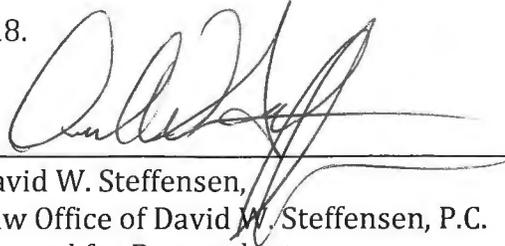
Not applicable.

X. RESERVATIONS AND REBUTTAL SUBMISSIONS

Respondent respectfully reserves the right to supplement his list of witnesses upon adequate notice to the Presiding Officer and Respondents, and to call such witnesses at the hearing of this matter should Complainant's Initial Prehearing Exchange or other discovery reveal the need for further witnesses to

rebut Complainant's case. Respondent reserves the right to cross-examine any witnesses offered by Complainant.

Dated this 20th day of September, 2018.

A handwritten signature in black ink, appearing to read "David W. Steffensen", is written over a horizontal line. The signature is stylized and cursive.

David W. Steffensen,
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