

Lahontan Regional Water Quality Control Board

MEMORANDUM

TO: Water Board Members

FROM: 
PATRICIA KOUYOUMDJIAN
EXECUTIVE OFFICER
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: JUN 20 2012

SUBJECT: EXEMPTION TO DISCHARGE PROHIBITION CONTAINED IN THE
WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION –
KINGS BEACH COMMERCIAL CORE IMPROVEMENT PROJECT,
KINGS BEACH, PLACER COUNTY

In ten days, I intend to sign the enclosed draft Order granting an exemption to the discharge prohibition specified in the *Water Quality Control Plan for the Lahontan Region* for the Kings Beach Commercial Core Improvement Project (Project) in Placer County. The exemption will allow the Project proponent to make roadway improvements along State Route 28, add bike lanes, and provide stormwater treatment and conveyance features, which currently do not exist in the area. The Project necessitates permanent and temporary impacts to stream environment zones and the 100-year floodplain of Lake Tahoe.

The Project is located in Kings Beach between Secline and Chipmunk Streets on the west and east, respectively, and between Steelhead Avenue and Lake Tahoe on the north and south, respectively. The Project meets requirements for an exemption to the discharge prohibition as necessary for environmental protection.

A public notice soliciting comments on the proposed Project will be posted on the Water Board's website for 10 days.

If you have any questions or comments regarding this matter, please contact Tobi Tyler at (530) 542-5435.

Enclosure: Draft Water Quality Certification Order and 100 Year Floodplain Discharge Prohibition Exemption

TT/adw/T: King Beach Core Imp Memo 6_13_12 TT.doc
[File: 6A311201001 /Kings Beach Commercial Core Improvement Project/ Placer County]

DON JARDINE, CHAIR | PATTY Z. KOUYOUMDJIAN, EXECUTIVE OFFICER

2501 Lake Tahoe Blvd., So. Lake Tahoe, CA 96150 | www.waterboards.ca.gov/lahontan



Lahontan Regional Water Quality Control Board

Dan LaPlante
Placer County Department of Public Works
P.O. Box 336
Kings Beach, CA 96143

ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND PROHIBITION EXEMPTION FOR THE KINGS BEACH COMMERCIAL CORE IMPROVEMENT PROJECT, PLACER COUNTY, WDID 6A311201001

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received a complete Clean Water Act Section 401 Water Quality Certification (WQC) application and application filing fee for the Kings Beach Commercial Core Improvement Project (Project) in Placer County. The Water Board also received information to support granting an exemption from a waste discharge prohibition in the Water Board's *Water Quality Control Plan for the Lahontan Region* (Basin Plan). This Order for WQC and waste discharge prohibition exemption hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A311201001. Please use this reference number in all future correspondence regarding this Project.

Any person aggrieved by this action of the Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 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 filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

PROJECT DESCRIPTION
Table of Project Information:

WDID Number	6A311201001
Applicant	Dan LaPlante P.O. Box 336 Kings Beach, CA 96143
Agent	Liz Lundholm Nichols Consulting Engineering P.O. Box 1760 Zephyr Cove, NV 89448

Table of Project Information continued:

Project Name	Kings Beach Commercial Core Improvement Project						
Project Purpose and Description	Modification of State Route (SR) 28 in Kings Beach from a four-lane cross section roadway to a three-lane cross section roadway, installation of designated bike lanes on both sides of the roadway, and construction of storm water collection and treatment features, which currently do not exist in the area. The new collection and treatment infrastructure includes sedimentation basins, swales, sediment traps, infiltration basins new roadway curb and gutter, that discharges into a rock-lined ditch in the backshore of Lake Tahoe. Drainage ditches and small depressional wetlands that constitute potential waters of the State, including waters of the U.S., and/or stream environment zones (SEZs) will receive temporary and permanent impact.						
Project Type	Water Quality (Storm water) Improvement Project						
Project Address or other Locating Information	Kings Beach between Secline and Chipmunk Streets and Steelhead Ave and Lake Tahoe, Placer County						
Location Latitude/Longitude	Latitude: 39.235906; Longitude: 120.022058						
Hydrologic Unit(s)	634.20 North Tahoe Hydrologic Area, of the Lake Tahoe Hydrologic Unit						
Overall Project Area	44.68 acre						
Receiving Water(s) Name	Lake Tahoe						
Water Body Type(s)	Drainage swales, wetland, perennial stream						
Designated Beneficial Uses	MUN, AGR, GWR, NAV,, REC-1, REC-2, COMM, COLD, WILD, BIOL, MIGR, SPWN						
Potential Water Quality Impacts	Discharges of fill materials including asphalt, cement aggregate base, pervious pavement and 12" drain rock. Discharge of fine sediment and other incidental wastes during construction.						
Area of Water(s) within the Overall Project Area	0.86 acre, 4,800 linear feet						
Project Impacts (Fill) to Waters of the State, including Waters of the U.S.	Waterbody Type	Permanent			Temporary		
		Acres / Sq. Ft.	Linear Feet	Cubic Yards	Acres / Sq. Ft.	Linear Feet	Cubic Yard
	<i>Roadside ditch</i>	0.25 ac (10,913 sf)			0.07 ac (3,255 sf)		
	<i>Perennial Stream</i>	0.005 ac (225 sf)			0.003 ac (143 sf)		
	<i>Wetland</i>	0.01 ac (424 sf)			0.013 ac (652 sf)		
	Total	0.27 ac (11,562sf)			0.09 ac (4,050 sf)		

Table of Project Information continued:

Federal Permit(s)	The applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Nationwide Permit 43, pursuant to Clean Water Act section 404.
Non-Compensatory Mitigation	The Project design incorporates Low Impact Development concepts, including minimizing the area of disturbance, avoiding the creation of new impervious surfaces, and re-vegetating with native plant species. Temporary erosion control measures during construction include silt fences, staked straw bale check-dams, geo-fabric, and temporary ground cover. A Mitigation Monitoring Reporting Program and a Dewatering Plan to dispose of groundwater encountered during construction to the sanitary sewer through North Tahoe Public Utility sewer system are included.
Compensatory Mitigation	The impacts to waters of the State, including waters of the US, are associated with the system of swales and wetlands in the Kings Beach area. Permanent impacts to 11,562 square feet of mostly roadside swales will be mitigated by the creation of three wet-meadow detention basins totaling 23,137 square feet. The increase in created, functional waters of the U.S. will be 0.531 acre (23,137 square feet). Temporary impact areas in waters will be restored to resemble existing conditions at project completion.
Applicable Fees	\$2,405.00 (\$944.00 application fee plus \$1,461 for 0.36 acre of impacts to Federal Jurisdictional waters at \$4,059 per acre).
Fees Received	\$2,405.00

CEQA COMPLIANCE

A Final Environmental Assessment/Environmental Impact Report/Environmental Impact Statement (EA/EIR/EIS) was prepared for the Kings Beach Commercial Core Improvement Project on behalf of the Tahoe Regional Planning Agency (TRPA), Placer County Department of Public Works, and California Department of Transportation pursuant to the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq.) and the State CEQA Guidelines. Placer County, as Lead Agency, certified a Final Environmental Impact Report (Final EIR) for the Kings Beach Commercial Core Improvement Project in June 2008. A Notice of Determination for the Kings Beach Commercial Core Improvement Project was filed with the State Clearinghouse (State Clearinghouse Number 2002112087) on September 23, 2008, pursuant to the California Environmental Quality Act (Public Resources Code sections 21062).

The Water Board, acting as a CEQA Responsible Agency in compliance with California Code of Regulations, Title 14, section 15096 (g)(2), evaluated the significant and potentially significant impacts to water quality identified in the Final EIR for the Kings Beach Commercial Core Improvement Project. The Water Board finds that the mitigation measures in the Final EIR are adequate to reduce significant or potentially significant water quality impacts to less than significant levels.

WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION

To protect beneficial uses and achieve water quality objectives for the waters of Lake Tahoe and its tributaries, the Basin Plan specifies the following discharge prohibitions:

“The discharge or threatened discharge, attributable to new development in Stream Environment Zones or which is not in accordance with land capability, of solid or liquid waste, including soil, silt, sand, clay, or other organic or earthen materials, to ground or surface waters in the Lake Tahoe Basin is prohibited.”

“The discharge, or threatened discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand and other organic and earthen materials to lands below the highwater rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe is prohibited.”

Stream Environment Zone and 100-year Floodplain Proposed Discharges

The proposed Project is located within the Stream Environment Zone (SEZ) and 100-year floodplain of Lake Tahoe. The Project entails the installation of a new storm water collection and conveyance infrastructure, including sedimentation basin, swales, sediment traps, infiltration basins, and new roadway curb and gutter. The Project will impact SEZ and 100-year floodplain areas of Lake Tahoe with proposed new permanent disturbance, and threatens to discharge wastes during construction.

Prohibition Exemption

The Water Board may grant exceptions to the above-cited prohibitions under certain circumstances. Resolution No. R6T-2008-031 delegates authority to the Regional Board Executive Officer to grant exemptions to the above-referenced discharge prohibition for projects that satisfy the criteria specified therein. The criteria that the project must satisfy are:

- 1. The Executive Officer has the authority to authorize the project under an existing general permit, general waiver or individual water quality certification order, excluding projects that require a Board action; and*
- 2. The project meets the exemption or exception criteria set forth in the Basin Plan; and*
- 3. The project is necessary for public health, safety, or environmental protection.*

The Kings Beach Commercial Core and Water Quality Improvement Project is necessary for environmental protection to improve the water quality of Lake Tahoe by providing storm water treatment and erosion control features to waters tributary to Lake Tahoe.

The Basin Plan allows exemptions to the above-cited discharge prohibition for projects within SEZs and/or 100-year floodplains of Lake Tahoe where all of the following findings can be made:

a) The project is necessary for public health, safety or environmental protection.

Currently, there are no collection and treatment features on the Kings Beach residential streets within the Project area to treat urban runoff that flows into Lake Tahoe. The Project will provide storm water conveyance and treatment systems through swales, basins, and storm water drains that discharge to a series of sediment and filter vaults where suspended sediments and solids will be captured before the water is released to surface waters. The Project is necessary to provide storm water treatment to urban runoff discharges in the Project area where no treatment currently exists. The Project is necessary for environmental protection.

b) There is no reasonable alternative, including spans, which avoids or reduces the extent of encroachment in the Stream Environment Zone.

The Applicant evaluated a range of alternatives in the EIR and chose the current alternative as it proposes the least impact on the project area and surrounding waters of the U.S. This project involves disturbance within mapped SEZ areas, including placement of a storm water treatment basin within SEZ that is currently low functioning (upland). This is reasonable considering the retrofit-improvement constraints of the project, and that SEZ will be converted to functional wetland, where storm flows will provide a permanent water source for the created wetland that will not require maintenance. Further reduction in extent of encroachment may diminish the overall purpose of the Project. There is no reasonable alternative to further avoid or reduce SEZ encroachment.

c) Impacts are fully mitigated.

The Applicant has submitted a list of BMPs that will be implemented during construction to avoid construction-related impacts to water quality. The impacts will be fully mitigated with BMPs and mitigation described in d) below.

d) SEZ lands are restored in an amount 1.5 times the area of SEZ developed or disturbed by the project.

Permanent unavoidable impacts to SEZ are estimated at 11,562 square feet. The Applicant will create 23,137 square feet of wetland/SEZ in the storm water detention basin near Griff Creek to offset these impacts, an amount exceeding 1.5 times the areas disturbed. Temporary impacts to SEZ will be restored in kind and/or improved to reduce erosion. Impervious coverage within the project area will be reduced 18,827 square feet; 4,105 square feet of this impervious coverage removal is in SEZ. SEZ lands will be restored in an amount exceeding 1.5 times the area of SEZ disturbed.

EXEMPTION GRANTED

As demonstrated above, the Project meets the conditions and criteria for an exemption to the SEZ waste discharge prohibition. The Applicant has incorporated appropriate BMPs into the Project to ensure that any erosion and surface runoff problems caused by the Project are minimized to levels of insignificance. The Project is hereby granted an exemption to the above-cited waste discharge prohibition.

Except in emergency situations, the Executive Officer shall notify the Board and interested members of the public of his intent to issue an exemption or exception subject to this Resolution at least ten (10) days before the exemption or exception is issued. A notice of exemption will also be posted on the Water Board website and distributed through an interested persons mailing list allowing at least ten (10) days to submit comments.

SECTION 401 WATER QUALITY CERTIFICATION

Authority

Section 401 of the CWA (33 U.S.C., paragraph 1341) requires that any applicant for a CWA Section 404 permit, who plans to conduct any activity that may result in discharge of dredged or fill materials to waters of the United States, must provide to the permitting agency a certification that the discharge will be in compliance with applicable water quality standards of the state in which the discharge will originate. No Section 404 permit may be granted (or valid) until such certification is obtained. The Applicant submitted a complete application and the applicable fees required for WQC under Section 401 for the Kings Beach Commercial Core Improvement Project. The Applicant has applied for U.S. Army Corps of Engineers (ACOE) authorization to proceed under Nationwide Permit No. 43 pursuant to CWA section 404.

California Code of Regulations (CCR) title 23, section 3831(e) grants the Water Board Executive Officer the authority to grant or deny WQC for projects in accordance with CWA section 401. The Kings Beach Commercial Core Improvement Project qualifies for such WQC.

Standard Conditions

Pursuant to CCR title 23, section 3860, the following standard conditions are requirements of this certification:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to California Water Code Section 13330 and CCR title 23, section 3867.

2. This certification action is not intended and must not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license unless the pertinent certification application was filed pursuant to CCR title 23, section 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action must be conditioned upon total payment of the full fee required under CCR title 23, section 3833, unless otherwise stated in writing by the certifying agency.
4. Neither project construction activities nor operation of the project may cause a violation of the Water Quality Control Plan for the Lahontan Region (Basin Plan), may cause a condition or threatened condition of pollution or nuisance, or cause any other violation of the California Water Code.
5. The project must be constructed and operated in accordance with the project described in the application for WQC that was submitted to the Water Board. Deviation from the project description constitutes a violation of the conditions upon which the certification was granted. Any significant changes to this project that would have a significant or material effect on the findings, conclusions, or conditions of this certification, including project operation, must be submitted to the Executive Officer for prior review and written approval.
6. This Water Quality Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.
7. The Lahontan Water Board may add to or modify the conditions of this certification as appropriate to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or Section 303 of the Clean Water Act, or as appropriate to coordinate the operations of this project with other projects where coordination of operations is reasonably necessary to achieve water quality standards or protect the beneficial uses of water. Notwithstanding any more specific conditions in this certification, the project must be constructed and operated in a manner consistent with all water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or Section 303 of the Clean Water Act.
8. This certification does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under the California Endangered Species Act (Fish and Game Code section 2050 et seq.) or the federal Endangered Species Act (16 U.S.C.

sections 1531 et seq.). If a "take" will result from any act authorized under this certification, the applicant must obtain authorization for the take prior to construction or operation of the project. The Applicant is responsible for meeting all applicable requirements of the Endangered Species Act for the project authorized under this certification.

Additional Conditions

Pursuant to CCR title 23, section 3859(a), the following additional conditions are requirements of this certification:

1. The Applicant must provide a report to the Lahontan Water Board documenting construction of the mitigation area no later than **November 15, 2012**. The report must include an "as-built" plan, including topographic map with resolution at least to the nearest foot, and must describe any problems encountered or variances from the approved design. The report must also include photographs showing the sites before and after construction.
2. A final mitigation monitoring report acceptable to the Executive Officer must be provided by **November 15, 2013**. The report must describe the results of monitoring performed during the previous year and progress towards achieving the performance standards and Project objectives in the application. The reports must also describe any problem(s) encountered during the year, and explain actions taken or proposed to address the problem(s), and a schedule for completion. The report must be provided to the Executive Officer under cover letter signed by the Applicant committing to implementation of appropriate action to address any problems.
3. Restoration of temporary disturbances and temporary discharges of fill to waters of the State must be achieved **within three months** of completing work in the area of the temporary impact. Initial restoration must include implementing measures to fully restore conditions to support all beneficial uses for the waterbody temporarily impacted in the shortest feasible time. Restoration must include, but is not limited to, grading to approximate pre-project contours and revegetation with native species. The Applicant must implement Best Management Practices (BMPs) to control erosion and runoff from areas associated with temporary fills.
4. No debris, cement, concrete (or wash water therefrom), oil or petroleum products must enter into or be placed where it may be washed from the Project site by rainfall or runoff into waters of the State. When operations are completed, any excess material must be removed from the Project work area, and from any areas adjacent to the work area where such material may be transported into waters of the State.
5. The Applicant must immediately notify Water Board staff by telephone whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would

cause noncompliance. A written notification of the adverse condition must be provided to the Water Board within two weeks of occurrence. The written notification must identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to any modifications by Water Board staff, for the remedial actions.

6. The Applicant must ensure that Contractor employs necessary measures to prevent the introduction or spread of noxious/invasive weeds within the Project and staging area. These measures may include the treatment of on-site infestations, the cleaning of all equipment and gear that has been in an infested site, the use of weed-free erosion control materials (including straw), and the use of weed-free seeds and plant material for revegetation of disturbed areas.
7. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
8. An emergency spill kit must be at the Project site at all times.
9. A copy of this Order must be maintained at the Project site so as to be available at all reasonable times to site operating personnel and Water Board staff.
10. Discharges of ground water or other fluids and wastes from sumps and excavated areas (dewatering) to SEZ lands and surface waters is prohibited.

Enforcement

1. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation must be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of Clean Water Act section 401(d), the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
2. In response to a suspected violation of any condition of this certification, the State Water Resources Control Board (State Water Board) or the Lahontan Water Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring report the State Water Board or Lahontan Water Board deems appropriate, provided that the burden, including costs, of the reports must be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
3. In response to any violation of the conditions of this certification, the Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

Section 401 Water Quality Certification Requirements Granted

I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards), and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this WQC.

Except insofar as may be modified by any preceding conditions, all WQC certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicant's project description and the terms specified in this WQC order, and (b) compliance with all applicable requirements of the Basin Plan.

We look forward to working with you in your efforts to protect water quality. If you have questions, please contact Tobi Tyler, Water Resources Control Engineer, at (530) 542-5435 or Alan Miller, P.E., Chief, North Basin Regulatory Unit, at (530) 542-5430.

PATRICIA KOUYOUMDJIAN
EXECUTIVE OFFICER

cc: Liz Lundholm, Nichols Consulting Engineers
David Landry / Tahoe Regional Planning Agency
Garry Kelley / California Department of Fish and Game, Rancho Cordova
Jason Brush / Wetlands Regulatory Office (WTR-8), US EPA, Region 9
(via email at R9-WTR8-Mailbox@epa.gov)
Lynette Blanchard / U.S. Army Corps of Engineers, Reno Office
Bill Orme / State Water Resources Control Board, Division of Water Quality
(via email at Stateboard401@waterboards.ca.gov)