California Regional Water Quality Control Board
Lahontan Region

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Arnold Schwarzenegger
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Tahoe City Public Utility District
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ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION, NOTICE OF APPLICABILITY OF LAKE TAHOE HYDROLOGIC UNIT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) GENERAL CONSTRUCTION ACTIVITY STORM WATER PERMIT, AND PROHIBITION EXEMPTION FOR THE LAKESIDE BIKE TRAIL PROJECT, PHASE V – VII, TAHOE CITY PUBLIC UTILITY DISTRICT, PLACER COUNTY, BOARD ORDER NO. R6T-2005-0007-60, WDID 6A310803004

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, a Notice of Intent (NOI) to comply with the National Pollutant Discharge Elimination System General Permit for Construction Activities in the Lake Tahoe Basin (General NPDES Permit), and application filing fee for the Tahoe City Public Utility District's Lakeside Bike Trail Project, Phases V – VII (Project) in Tahoe City, 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, Notice of Applicability (NOA) for coverage under the General NPDES Permit, and waste discharge prohibition exemption hereby assigns this Project the following reference numbers: Board Order No. R6T-2005-0007-60 and Waste Discharger Identification (WDID) No. 6A310803004. Please use these reference numbers 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, furlough day, 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	6A310803004
Applicant	Tahoe City Public Utility District P.O. Box 5249 Tahoe City, CA 96145 Attention: Matt Homolka
Agent	Walter Auerbach, Bree Allen Auerbach Engineering Corporation P.O. Box 5359 Tahoe City, CA 96145
Project Name	Lakeside Bike Trail Project, Phase V – VII
Project Purpose and Description	Construct the final 3 phases of a multi-use trail system known as the *Community Intertie Project*, which will connect existing trails between Grove Street and the Tahoe State Recreation Area in Tahoe City. A total of 2,400 linear feet of trail is proposed for Phase V through Phase VII. The Project proposes to permanently impact 2,738 square feet of wetlands primarily in Phase VI of the Project. These unavoidable impacts will be minimized by using raised boardwalks over the wetlands. Permanent wetland impacts will be mitigated at a minimum of 2:1 mitigation ratio given the high quality of wetlands impacted and temporal loss that will occur.
Location (closest City & County)	Tahoe City, Placer County
Location Latitude/Longitude	Latitude: 39.1720, Longitude: -120.1372
Hydrologic Unit(s)	North Tahoe Hydrologic Area 634.10 in the Lake Tahoe Hydrologic Unit, 634.00
Project Area	75,595 square feet (1.74 acres)
Receiving Water(s) Name	Tahoe City Creek, tributary to Lake Tahoe, and associated wetlands
Water Body Type(s)	Seasonal wetland, lacustrine scrub, seep, riparian wetland, and perennial drainage.
Area of Water(s) of the U.S. (WOUS) within the project area	0.5 acre
Area of Permanent Fill in WOUS	**2,738 square feet (0.063 acre total)**:

Wetland type	*Phase V (sf)*	*Phase VI (sf)*	*Phase VII (sf)*
Lacustrine		757	
Riparian	245	73	
Seasonal			706
Seep		882	
Perennial Drng		75	
Total	**245**	**1,787**	**706**

Table of Project Information continued:

Linear feet of Permanent Fill/Excavation in WOUS	Approximately 270 linear feet
Area of Disturbance in Stream Environment Zone (non-jurisdictional wetlands)	24,834 square feet of total new SEZ disturbance (includes 2,738 square feet of jurisdictional wetlands)
Federal Permit(s)	The applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a General Permit 16, pursuant to Clean Water Act section 404.
Non-Compensatory Mitigation	Site-specific Best Management Practices (BMPs) will be used throughout the construction period and for winterization to control erosion. Temporary BMPs include a limited construction season (May 1 to October 15), erosion control and tree protection fencing, gravel bag check dams, and dust control. Permanent BMPs include soil stabilization with revegetation, stone retaining walls and bank stabilization in steep areas to minimize land disturbance, an infiltration trench along the trail to retain stormwater runoff, stormfilter catch basins for capturing stormwater from the parking lot and Highway 28, and a trench drain to transport the stormwater runoff to the treatment area.
Compensatory Mitigation for Wetlands	To compensate for unavoidable wetland impacts to 0.063 acre of wetlands, the Applicant is required by November 1, 2011 to either (a) create seasonal wetlands on-site at a minimum ratio of 2 to 1, or (b) create wetlands off-site at a minimum ratio of 2 to 1. Greater ratios may be required depending on the timing of implementation and in light of the total wetland functions and values considered. Temporary impacts must be restored within the same season of impact or within 6 months, whichever is sooner.
Compensatory Mitigation for SEZ Lands	To compensate for unavoidable SEZ impacts, TCPUD will restore SEZ lands in a ratio of 1.5 to 1 through purchase of SEZ restoration credits from the California Tahoe Conservancy.
Applicable Fees	**$995.00** ($640.00 application fee + $355.00 for 0.066 acre of temporary and 0.063 acre permanent impacts to Federal Jurisdictional Waters at $2,752 per acre) **$346.00**/ General NPDES Permit (2 acres)
Fees Received	$500.00 / Water Quality Certification (submitted March 13, 2008) $346.00/ General NPDES Permit (submitted June 3, 2010)
Fees Due	**$495.00**

CEQA COMPLIANCE

On February 18, 1998, the Tahoe City Public Utility District (TCPUD) certified an Environmental Impact Report (EIR) for the *Community Intertie Project* pursuant to the provisions of the California Environmental Quality Act (CEQA), Public Resources Code 21000 et. Seq. The document was adopted with a Statement of Overriding Considerations for construction of additional development within Stream Environment Zones (SEZs) and backshore areas of Lake Tahoe.

The Water Board, acting as a CEQA Responsible Agency in compliance with California Code of Regulations, Title 14, section 15096, has considered TCPUD's EIR for the *Community Intertie Project*, the mitigation measures incorporated into the EIR to reduce potentially significant water quality impacts to less than significant with mitigation, and the statement of overriding considerations for unavoidable impacts. The Water Board's CEQA mitigation findings are as follows:

a. Significant impact -Construction of the Lakeside Trail Phase V-VII will result in permanent new disturbance to Stream Environment Zones (SEZs) and backshore (including wetlands).

   Mitigation finding -A Statement of Overriding Considerations was adopted with the EIR for impacts to SEZs and backshore areas. The TCPUD Board of Directors found that "...recreational, social, safety, and transportation considerations outweigh the unavoidable impacts to SEZs." Because the Tahoe City Area is very congested and has limited side streets, a lack of project alternatives exist. There has been an ongoing safety issue between cyclists and cars in the Tahoe City area, especially in the summer months. Implementation of temporary and permanent Best Management Practices (BMPs), as well as compensatory mitigation will help to reduce and mitigate the impacts to the SEZ. Compensatory SEZ mitigation in the amount of 1.5 to 1 will be conducted. Mitigation for wetland impacts will result in restoration of wetlands on or off site in a ratio of 2:1. While the option of on-site mitigation is still possible the current proposal is for all SEZ mitigation to be done, off-site using California Tahoe Conservancy restoration credits. Additional mitigation for wetlands loss will be proposed. TCPUD will be responsible for ensuring the implementation of the mitigation measures and restoration associated with this significant impact. Although mitigated through off site SEZ restoration, the project will result in loss of SEZ lands (including wetlands) directly adjacent to Lake Tahoe. The loss of runoff and groundwater treatment in this area is considered significant. The criteria for a Basin Plan prohibition exception have been met. I find the project will result in significant impacts from permanent loss of SEZ function and values at the project site.

b. Significant impact -Grading, excavation and other construction activities could result in increased deposition of sediment in to Lake Tahoe, which could adversely impact Lake Tahoe water quality.

Mitigation finding -TCPUD has submitted a list of BMPs that will be implemented during construction to avoid construction related impacts to water quality. Protective fencing will be placed along the length of the trail to minimize impacts within the trail vicinity. All construction equipment will stay within this area and access the site via Highway 28, the Safeway parking lot and the Tahoe City Marina parking lot. Sediment protection fencing will be placed around all erodible areas and temporary stockpile and material processing areas. Gravel bags will also be used in appropriate areas to control polluted runoff. Dust control provisions will be implemented during construction. Construction will cease and temporary erosion control measures will be installed immediately in the event of adverse weather. Vegetative protection fencing will be installed prior to construction. All disturbed areas will be revegetated (with vegetation appropriate for the land capability) upon completion of the project. The Water Board is responsible for ensuring that TCPUD is implementing adequate BMPs to protect water quality. Water Board staff has reviewed the TCPUD's project submittal and has determined that implementation of the above mentioned BMPs will reduce the identified potentially significant impact to less than significant levels.

c. Potentially significant impact -The Lakeside Trail could result in an increase in urban contaminants in surface water runoff, which could adversely impact Lake Tahoe water quality.

Mitigation finding -TCPUD has submitted plans for managing runoff from the bike trail in their Report of Waste Discharge. An infiltration trench will be placed along the length of the trail. Disturbed areas will be revegetated according to recommendations made by a qualified revegetation specialist. A two foot vegetated water quality swale will be constructed on the side of the trail using native SEZ vegetation. Disturbed areas will also be revegetated after backfilling with native species suitable for the land capability (e.g., SEZ vegetation in class 1b land). All disturbed areas will receive an application of pine needle or other native mulch. All seeded and stabilized areas will be inspected, monitored, and maintained on a regular basis to ensure their success. Stone retaining walls will be installed in cut slope areas requiring stabilization. The Water Board is responsible for ensuring that TCPUD is implementing adequate BMPs to protect water quality. Water Board staff has reviewed the TCPUD's project submittal and has determined that implementation of the above mentioned BMPs and mitigation will reduce the identified potentially significant impact to a less than significant level.

d. The EIR identifies other potentially significant impacts and significant impacts that are not related to water quality. The Water Board is not responsible for

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implementing the mitigation measures identified in the EIR or additional mitigation measures other parties have deemed necessary.

This Order includes mitigation monitoring requirements for impacts to waters of the State, including waters of the U.S. The Water Board will file a Notice of Determination and Statement of Overriding Considerations for the above-referenced EIR with the State Clearinghouse concurrently with this WQC.

WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION 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 prohibition:

> *The discharge or threatened discharge, attributable to new development or permanent disturbance in Stream Environment Zones, of solid or liquid waste, including soil, silt, sand, clay, rock, metal, plastic, or other organic, mineral or earthen materials, to Stream Environment Zones in the Lake Tahoe Basin is prohibited.*

Stream Environment Zone Disturbance

The proposed Project is located within the Stream Environment Zone (SEZ) and backshore areas of Lake Tahoe. The project by its very nature will impact SEZ areas.

Prohibition Exemption

Resolution No. R6T-2008-031 delegates authority to the Regional Board Executive Officer to grant exceptions to the above-referenced discharge prohibition for projects that satisfy criteria specified in Resolution No. R6T-2008-031. 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 primary purpose of the Lakeside Bike Trail Project is for public health and safety by eliminating bike traffic along an unsafe portion of Highway 28 through Tahoe City, and for environmental protection by providing an alternative form of transportation in a congested area.

The Basin Plan allows exemptions to the above-cited discharge prohibition for projects within SEZs where all of the following findings can be made:

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

The Project is necessary for public health and safety. Tahoe City is very congested in summer months that have resulted in numerous conflicts between bicycles and motorized vehicles. The California Highway Patrol has documented nine collisions involving bicyclists in the Tahoe City Area. The proposed path would reduce the amount of bicyclists on Highway 28 and thereby reduce bicycle/vehicle interactions on Highway 28 in Tahoe City. Traffic congestion in Tahoe City is due to dense development and the limited transportation routes. Relatively few side streets are available in Tahoe City resulting in congestion along Highway 28 particularly in the summer. Local emergency response agencies, such as the Placer County Sheriff and the North Tahoe Fire Protection District, have documented the safety issues associate with the bicycle and motor vehicle traffic in Tahoe City. The Project has been identified as necessary for implementation of the Tahoe City Community Plan (1994), the Tahoe Regional Planning Agency (TRPA) Transportation Plan (TRPA, 1992), and the Lake Tahoe Environmental Improvement Program (TRPA, 1997). The Project is necessary for public health and safety and, therefore, satisfies this exemption provision.

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

Several other alignments designed to avoid the SEZ areas were examined. However, no other alternative met the primary goals of providing a direct, safe link between the ends of existing trails while separating trail users from highway corridors. The Applicant has reduced the amount of encroachment upon the SEZ by using elevated wooden boardwalks with a concrete sonitube footing system through the second half of the trail span. Small equipment such as a "bobcat" and small paver sized machines will be used to reduce the amount of temporary disturbance. There is no reasonable alternative to reduce SEZ encroachment.

c) *Impacts are fully mitigated.*

TCPUD has submitted a list of BMPs that will be implemented during construction to avoid construction related impacts to water quality. Geotextile fabric will be placed around the trail fill to avoid the possibility of fine materials entering ground or surface water. Protective fencing will be placed along the length of the trail to minimize impacts within the trail vicinity. All construction equipment will stay within this area and access the site via Highway 89, the Safeway parking lot area, and the Tahoe City Marina Parking area. Sediment protection fencing and gravel bags will be placed around all erodible areas and temporary stockpile and material processing areas. Dust control provisions will be implemented during construction. Construction will cease and temporary erosion control measures will be installed immediately in the event of adverse weather. Vegetative protection fencing will be installed prior to construction. All disturbed areas will be revegetated with vegetation appropriate for the land capability and according to recommendations made by a qualified revegetation specialist. An infiltration trench along the trail will retain stormwater runoff, stormfilter catch basins will capture stormwater from the parking lot and Highway 28, and a trench drain will

transport the stormwater runoff to the treatment area. All seeded and stabilized areas and stormwater treatment systems will be inspected, monitored, and maintained on a regular basis to ensure their success.

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

The Project will disturb a total of 25,721 square feet within the SEZ. There is 887 square feet of existing disturbance within the SEZ project area. Additionally, 2,738 square feet of SEZs are also jurisdictional wetlands which will be mitigated at a ratio of 2:1. If this mitigation results in mitigation or the SEZ losses, separate SEZ mitigation for this 2,738 square feet at a ratio of 1.5:1 will not be needed. Therefore, there is a total of 24,834 square feet of new disturbance within the SEZ. The required mitigation, at 1.5:1 for the Project, is 37,251 square feet of restored SEZ land. This requirement will be the purchase of SEZ restoration credits from the California Tahoe Conservancy. However, this mitigation requirement is reduced to 26,144 square feet if the TCPUD demonstrates that the mitigation for jurisdictional wetland loss at a ratio of 2:1 includes at least 4,107 square feet (2,738 times 1.5) of SEZs.

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 Best Management Practices (BMPs) into the Project to ensure that any erosion and surface runoff problems caused by the Project are minimized. 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.

STORM WATER POLLUTION PREVENTION PLAN

Tahoe City Public Utility District has prepared and submitted a comprehensive SWPPP for this project and must ensure a copy of the SWPPP is on-site during construction and that all contractors and their employees are made aware of its contents. A construction meeting shall be held prior to construction to inform contractors, their employees, and any subcontractors of SWPPP requirements and the importance of SWPPP compliance.

ENFORCEMENT

Failure to abide by the conditions of the General Construction NPDES Permit including the information contained in the Report of Waste Discharge and the submitted Storm Water Pollution Prevention Plan could result in an enforcement action as authorized by provisions of the California Porter-Cologne Water Quality Act.

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GENERAL INFORMATION

1. The project must be constructed in accordance with the requirements contained in the General Construction NPDES Permit and in accordance with the information submitted in the Notice of Intent. This includes preparing and implementing the monitoring requirements specified in Attachment "G" of the permit.

2. The required annual fee (as specified in the annual billing you will receive from the State Water Resources Control Board) must be submitted until the Notice of Applicability is officially revoked. Revocation procedures are specified in Section VII.C. of the General Construction NPDES Permit.

3. Failure to abide by the conditions of the General Construction NPDES Permit including the information contained in the Report of Waste Discharge and the Storm Water Pollution Prevention Plan could result in an enforcement action as authorized by provisions of the Porter-Cologne Water Quality Control Act.

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 Tahoe City Public Utility District (Applicant) submitted a complete application and the $500.00 application filing fee required for WQC under Section 401 for the Public Safety Center Project. The Applicant has applied for U.S. Army Corps of Engineers (ACOE) authorization to proceed under General Permit No. 16 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 Public Safety Center 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

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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.

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Additional Conditions

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

1. The Applicant must remit to this office an additional **$495.00** (see Table of Project Information) to complete the WQC filing fee for the Project application, pursuant to CCR section 2200. The check should be made payable to the **State Water Resources Control Board**. The authorization to operate the project pursuant to this WQC is conditioned upon payment of all applicable fees for review and processing the WQC application and administering the State's WQC program. **Final payment is due within sixty days** of this certification under California Code of Regulations, title 23, section 3833.

Wetland Mitigation Requirements

2. To compensate for unavoidable wetland impacts, the Applicant must create a minimum of two areal units of wetland for each areal unit of wetland permanently altered. Areas subject to temporary disturbance must be restored to approximate pre-project conditions. By **August 15, 2010** the Applicant must submit to the Water Board either of the following:

   a. A Compensatory Mitigation and Monitoring Plan (CMMP) for acceptance by the Executive Officer for the proposed on-site, in-kind wetland mitigation; or
   b. A CMMP for acceptance by the Executive Officer for off-site, in-kind wetland mitigation, as an alternative to the proposed on-site mitigation.

   The CMMP must follow the current U.S. Army Corps of Engineers *Final Mitigation Guidelines and Monitoring Requirements*, dated April 19, 2004, which is available on the Internet at www.spl.usace.army.mil/regulatory/mmg_2004.pdf, and must include implementation and monitoring/reporting schedules. The reporting must include an as-built report, 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 a minimum of three photo points at the mitigation site showing the site before and after construction. The monitoring and reporting schedule must also include a minimum of five (5) years of monitoring or as necessary thereafter to achieve a success criterion for vegetation of at least 80%. Annual reports must summarize monitoring findings and evaluate the success in restoring wetlands and floodplain. The final report must indicate whether performance standards, in the Final Mitigation and Monitoring Plan have been met.

3. **No later than November 1, 2011**, a minimum of 5,476 square feet (0.126 acre) of wetland must be created either on-site or off-site to compensate for the permanent loss of 2,738 square feet seasonal wetlands, seeps and riparian wetlands. (See SEZ mitigation requirement on page 8.)

4. A qualified professional with experience in hydrology and wetland restoration must monitor the construction of the wetlands mitigation. Any additional work or variation from the described work, which may result in additional or increased impacts to waters of the State (including quantity or quality of water or habitat) or reduces the amount of wetland created, is not authorized unless approved in writing by the Executive Officer prior to implementation.

5. The Applicant must submit a report to the Water Board by **December 15, 2011** documenting construction of wetlands in the mitigation area. The report must include an "as-built" plan, including topographic map prepared by a licensed California surveyor, 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.

6. The Applicant must submit **annual mitigation site status reports** by **December 15 of each year** that fully describes, relative to mitigation success criteria, the site conditions at the end of the first, second, third, and fourth year following the construction of the mitigation site (four annual reports total).

7. A **final mitigation report** must be submitted to the Water Board at the end of five years from the date as-built plans for the mitigation area are required to be submitted to the Water Board (**December 15, 2016**). The final report must indicate whether performance standards are met and the status of compliance with mitigation requirements. If the mitigation areas fail to meet the success criteria established in the CMMP, the Applicant must provide a technical report proposing remedial measures, for acceptance by the Water Board Executive Officer, to be implemented within one year following the determination that success criteria were not met.

8. A conservation easement on the mitigation areas must be established to protect the wetland values of the mitigation area in perpetuity. The conservation easement must be executed in favor of a nonprofit or governmental agency qualified to hold conservation easements under California Civil Code section 815.3. The applicant must submit the final Conservation Easement and other documentation that the mitigation area will be protected in perpetuity to the Executive Officer no later than **December 15, 2012**.

Other Requirements

9. Permanent impacts to SEZs (that are not also wetlands) must be restored at a minimum ratio of 1.5:1 either on-site or through restored SEZ land credits from the California Tahoe Conservancy. An SEZ Mitigation Report must be submitted by **December 15, 2012**.

10. All temporary best management practices must be inspected (a) daily during project construction and (b) weekly during the October 15 to May 1 period(s) when not snow-covered to ensure they are functioning properly. The Applicant must maintain and keep daily inspection logs onsite during project construction and provide a copy of inspection logs and records of any corrective actions to Water Board staff. The

Applicant must submit an annual summary of construction season inspections and corrective actions implemented to the Water Board by **December 15** of each year in which construction occurs.

11. The Applicant must stabilize from erosion all areas of temporary impacts to waters of the State and all other areas of temporary upland disturbance which could result in a discharge or a threatened discharge to waters of the State.

12. The Applicant must temporarily stabilize the site from erosion (winterize) prior to October 15 in a manner which will remain effective until May 1 of the following year, until revegetation success criteria are met.

13. Prior to commencing construction, the Applicant must affirmatively document whether there are any subsurface utilities in the area of construction and **submit such documentation to the Water Board**. This can be accomplished by: (1) contacting all utilities (both public and private) that provide service in the area, documenting these contacts and submitting such documentation to the Water Board; (2) contacting Underground Service Alert, documenting this contact and submitting such documentation to the Water Board; or, (3) some other equivalent affirmative action to determine whether or not there are any subsurface utilities in the area of construction and submitting the results of such action to the Water Board. The area of construction is defined as any area within the Project boundaries where there will be excavation, construction of borings or driving of piles. **If subsurface utilities are located in the construction area, the Applicant must provide a utility avoidance plan that will be followed during construction.**

14. Wetland areas that will be avoided near project and/or staging areas must be protected by colored construction fencing or equivalent barriers.

15. The Applicant must prevent the introduction or spread of noxious/invasive weeds within the project and staging area. Control measures may include removing existing invasive vegetation, cleaning all equipment and gear prior to use on the site, using weed-free erosion control materials (including straw), and using weed-free seeds and plant material for revegetation of disturbed areas.

16. Water Board staff must be notified 48 hours prior to commencement of ground disturbance.

17. The Applicant must permit Water Board staff or its authorized representative upon presentation of credentials:

    a) Entry onto Project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
    b) Access to copy any record required to be kept under the terms and conditions of this Order.
    c) Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Order.
    d) Sampling of any discharge or surface water covered by this Order.

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18. No debris, cement, concrete (or wash water therefrom), oil or petroleum products must be allowed to 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.

19. 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.

20. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.

21. An emergency spill kit must be at the project site at all times.

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

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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 Lauri Kemper, Assistant Executive Officer, at (530) 542-5436.

HAROLD J. SINGER
EXECUTIVE OFFICER

cc: David Landry / Tahoe Regional Planning Agency
Robert Hosea / California Department of Fish and Game
Dave Smith / 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 / SWRCB, Division of Water Quality (via email at Stateboard401@waterboards.ca.gov)
Bree Allen, Auerbach Engineering Corp.

TT/clhT/ Lakeside Bike Trail Phase 5-7 401 6-1-10.doc
[File: Lakeside Trail Phase V-VII, Tahoe City Public Utility District / Placer County/WDID 6A3100803004]

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