

Lahontan Regional Water Quality Control Board

September 5, 2014

Dan Moore, General Manager
Tahoe Keys Property Owners Association
356 Ala Wai Boulevard
South Lake Tahoe, CA 96150

BOARD ORDER NO. R6T-2014-0080, FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION, NOTICE OF APPLICABILITY FOR COVERAGE UNDER THE MARINA GENERAL PERMIT AND BASIN PLAN PROHIBITION EXEMPTION FOR TAHOE KEYS PROPERTY OWNERS ASSOCIATION WEST CHANNEL DREDGE AND BEACH REPLENISHMENT PROJECT, EL DORADO COUNTY, GENERAL PERMIT NO. R6T-2011-0024, WDID NO. 6A091407003

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received a complete Clean Water Act (CWA) section 401 Water Quality Certification (WQC) application, a Notice of Intent (NOI) to comply with the *National Pollutant Discharge Elimination System General Permit for Industrial Activities and Maintenance Dredging at Marinas in the Lake Tahoe Basin*, Board Order No. R6T-2011-0024 (Marina General Permit), and application filing fee for the Tahoe Keys Property Owners Association (TKPOA) West Channel Dredge and Beach Replenishment Project (Project). The Water Board also received information to support granting an exemption to a waste discharge prohibition in the Water Board's Water Quality Control Plan for the Lahontan Region (Basin Plan). We have reviewed these and other supplemental materials you have provided. Based on the information contained in your submittal, it is our determination this Project meets the required conditions to be approved under the Marina General Permit. All of the requirements for maintenance dredging contained in the Marina General Permit are applicable to your Project. This Order for WQC, Notice of Applicability (NOA) for coverage under the Marina General Permit and waste discharge prohibition exemption hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A091407003. Please use these reference numbers in all future correspondence regarding this Project. A copy of the Marina General Permit may be found at the Water Board website at:

http://www.waterboards.ca.gov/lahontan/water_issues/programs/permitting/index.shtml.

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 (CCR), 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.

Table of Project Information:

WDID Number	6A091407003						
Applicant	Dan Moore, General Manager Tahoe Keys Property Owners Association 356 Ala Wai South Lake Tahoe, CA 96150						
Agent	Coleen Shade 595 Tahoe Keys Blvd., Ste. A-2 South Lake Tahoe, CA 96150						
Project name	Tahoe Keys Property Owners Association West Channel Dredge and Beach Replenishment Project						
Project purpose and description	The Applicant proposes to dredge up to 5,600 cubic yards (cy) of sand to a depth of 6,217 feet above mean sea level (Lake Tahoe Datum) from Tahoe Keys' west channel and lagoons over a two to three year period (2014 -2016). The area that will be dredged is approximately 24,000 square feet (0.55 acre) each year and the dredging operation will be contained within a turbidity curtain. The dredging will be done using a long-armed, tracked excavator from a barge or bed of sand, depending on which reach of the channel is being dredged. The sandy material removed from west channel will be placed on the beach area to the east of the channel for beach replenishment and spread out over an area of 0.7 acre.						
Project Type	Maintenance Dredging						
Project County	South Lake Tahoe, El Dorado County						
Project Address or other Locating Information	356 Ala Wai Blvd., South Lake Tahoe, CA						
Location latitude/longitude	Latitude: 38.937 Longitude: -120.014						
Hydrologic Unit(s)	South Tahoe Hydrologic Area 634.10 in the Lake Tahoe Hydrologic Unit, 634.00						
Project area	3 acres						
Receiving Water(s) Name	Lake Tahoe						
Water Body Type(s)	Lake						
Designated Beneficial Uses	MUN, AGR, GWR, NAV, REC-1, REC-2, COMM, COLD, WILD, BIOL, MIGR, SPWN						
Area of WOUS within the Project Area	2.8 acres						
Potential Water Quality Impacts	Discharge of waste earthen materials from dredging activities.						
Impacts of Dredging to Waters of the state, including WOUS	Waterbody Type	Permanent			Temporary		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
	Lake				1.1		5,600
	Riparian						
	Stream						
Wetland							

Table of Project Information (continued):

Impacts of Fill to Waters of the state, including WOUS	Waterbody Type	Permanent			Temporary		
		Acre	Linear Feet	Cubic Yards	Acre	Linear Feet	Cubic Yards
	Lake	0.7		5,600			
	Riparian						
	Stream						
	Wetland						
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Letter of Permission, pursuant to CWA section 404 and section 10 of the Rivers and Harbors Act.						
Non-compensatory mitigation (for dredge and fill discharge to waters of the state)	To minimize turbidity, all dredging will be done behind turbidity curtains, which will remain until the turbidity is reduced to acceptable levels, as specified in the Marina General Permit. The dredged material will be placed on the beach to the east of the channel for beach replenishment. Pre-Project analysis sediment analysis (sieve analysis and total petroleum hydrocarbons) and a Tahoe Yellow Cress survey were performed						
Applicable fees	\$2,268 (\$1,097 application filing fee + \$974 for 5,600 cubic yards of dredging material at \$0.174 per cubic yard + surcharge.)						
Fee received	\$2,268						
Fee due	\$0						

CEQA COMPLIANCE

Water Board staff have determined that this Project is exempt from the California Environmental Quality Act (CEQA, Public Resources Code Section 21000 et seq.). In accordance with CEQA Guidelines Section 15304(g), the basis for CEQA exemption for the dredging operations is "Minor Alterations to Land." The Water Board will file a Notice of Exemption with the State Clearinghouse concurrently with this Order.

MONITORING AND REPORTING PROGRAM NO. R6T-2011-0024

The Project is a maintenance dredging project. In accordance with Marina General Permit, the Applicant must adhere to the monitoring and reporting requirements specified in Attachment E, section IV.C, Maintenance Dredging Monitoring. It is your responsibility to ensure that all required water and soil analyses are conducted in accordance with the reporting requirements and limits specified in the Monitoring and Reporting Program for the Marina General Permit.

WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION

To protect beneficial uses and achieve water quality objectives for the waters in the Lake Tahoe Hydrologic Unit, the Basin Plan specifies the following discharge prohibition:

The discharge or threatened discharge, attributable to new development 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. (Chapter 5, Waste Discharge Prohibitions, page 5.2-4)

The Project involves discharge of earthen materials within 100-year floodplain of Lake Tahoe and beach area, which is a stream environment zone (SEZ), on the shore of Lake Tahoe within the Lake Tahoe Hydrologic Unit. This Project includes beach replenishment on the east side of the entrance

channel to the Tahoe Keys. Approximately, 5,600 cubic yards of sand will be spread out over 0.7 acre of beach.

Prohibition Exemption Criteria For Restoration and Erosion Control

The Basin Plan allows exemptions to the above-cited discharge prohibition for activities in SEZs and 100 year floodplain of the Lake Tahoe Hydrologic Unit for erosion control, habitat restoration, wetland rehabilitation, SEZ restoration and similar projects, such as this one, provided that findings are made to support the exemption criteria below (Basin Plan page 5.8-7).

(a) The project, program, or facility is necessary for environmental protection.

The Project is designed to use the sand removed from the Tahoe Keys channel area to replenish the beach area east of the channel. The natural process of shoreline erosion and sediment transport lead to re-deposition of predominantly sandy sediments in the deeper channel areas around marinas. Human activities can accelerate shoreline erosion. Currently low lake levels can also exacerbate shoreline erosion. Maintenance dredging, which is exempted from discharge prohibition in the Marina General Permit, will be performed in the Tahoe Keys channel down to a pre-dredged level of 6,217 feet above mean sea level. The sandy material dredged from the channel will be used for beach replenishment rather than being disposed of to a sanitary landfill.

(b) There is no reasonable alternative, including relocation, which avoids or reduces the extent of encroachment in the SEZ.

Beach replenishment is in an area of beach, therefore SEZ, and therefore requires SEZ encroachment. No reasonable alternative to the proposed Project would reduce the extent of encroachment in the SEZ and still meet the purpose of the Project.

(c) Impacts are fully mitigated.

Temporary impacts to SEZs will be mitigated by using erosion and sediment control BMPs, including use of filter fences, fiber rolls, and preservation of existing vegetation. There are no permanent impacts to SEZs in the Project area. BMPs are required to minimize temporary disturbance in the SEZ and prevent construction activities from discharging sediment and other pollutants to the lake, tributaries and surrounding SEZ areas.

Resolution No. R6T-2008-031, delegates authority to the Water Board Executive Officer to grant exemptions 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's primary purpose is to reduce, control or mitigate existing sources of erosion or water pollution.*

The primary purpose of the Project is beach replenishment, which supports in the reduction, control and mitigation of existing sources of erosion. The Project meets the criteria necessary for the Executive Officer to grant an exemption.

Exemption Granted

As demonstrated above, the Project meets the conditions and criteria for an exemption to the above-cited SEZ discharge prohibition. The Applicant has incorporated appropriate BMPs into the Project to ensure that 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 the intent to issue an exemption at least ten days before the exemption 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 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 WOUS, shall 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 has submitted a complete application and applicable filing fees for WQC under section 401 for the Project. This Order for WQC is based upon the information provided in the application and subsequent correspondence. The USACOE will regulate the Project under Letter of Permission pursuant to section 404 of the CWA and Section 10 of the Rivers and Harbors Act.

CCR, title 23, Section 3831(e) grants the Water Board Executive Officer the authority to grant or deny water quality certification for projects in accordance with section 401 of the CWA. Maintenance dredging and filling activities qualify for such water quality certification.

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 Water Code section 13330, and CCR title 23, section 3867.
2. This certification action is not intended and shall 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 shall be conditioned upon total payment of the full fee required under CCR Section 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 Basin Plan, may cause a condition or threatened condition of pollution or nuisance, or cause any other violation of the 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 WQC 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 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 CWA, 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 WQC.
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 requirements of the applicable 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. This WQC Order authorizes maintenance dredging in the channel to Tahoe Keys to a **Lake bottom depth elevation of 6,217 feet Lake Tahoe Datum.**
2. Turbidity curtains must be used during Project implementation to effectively contain and isolate wastes from dredging and prevent turbidity from lakebed sediments outside of the curtained area.
3. In addition to complying with the monitoring and reporting requirements specified in Marina General Permit, which state that turbidity measurements must be taken every 2 hours from a location along approximately a 20-foot radius of the dredging equipment during the dredging operation, if a sediment plume is visible outside of the turbidity curtains, the Applicant must immediately measure the turbidity within the plume area. The Applicant must also delineate the size of the area by visually documenting the extent of the plume with a series of at least six photographs. Turbidity measurements may be taken with a hand held field meter. The sample location and sample results must be recorded in a logbook and faxed to the Water Board at (530) 544-2271 within 12 hours of taking the turbidity measurement.

4. Prior to initiating construction of the Project, the Applicant must provide documentation of whether there are any subsurface utilities in the area of excavation. This can be accomplished by: (1) contacting all utilities (both public and private) that provide service in the area, documenting these contacts; (2) contacting Underground Service Alert, documenting this contact; or, (3) some other equivalent affirmative action to determine whether or not there are any subsurface utilities in the area of construction. 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 area of excavation, the Applicant must also provide a utility avoidance plan that will be followed during construction.
5. A copy of this WQC Order, a copy of the complete WQC application submitted to the Water Board, and the utility avoidance plan (if required by additional condition above) must be available at the Project site during construction of the Project.
6. Water Board staff must be notified within **forty-eight hours** prior to commencing dredging.
7. **No later than October 31, 2014, October 31, 2015, and October 31, 2016 (if necessary)**, you must provide to this office a technical report describing (a) the actual final depths in the area of the dredging activities and (b) the volumes of material dredged from the area. This report must evaluate a statistically representative portion of the dredged area, and include a certification from a California licensed land surveyor or registered civil engineer that the elevations, as measured **within one week** after dredging operations are completed, are as reported.
8. The Applicant must prevent the introduction or spread of noxious/invasive weeds within the Project and staging areas. Measures may include, but are not limited to, the treatment of on-site infestations and the cleaning of all equipment and gear that has been at an infested site.
9. Construction and mechanical equipment must be monitored for leaks, and removed from service if necessary to protect water quality. Mechanical equipment that will be submersed in Lake Tahoe during the dredging operation must be steam-cleaned and inspected for leaks prior to use.
10. Dredging operations must cease immediately if inclement weather or wave and/or wind action threatens to cause suspended sediment discharges to spread turbidity beyond the area surrounding the dredging equipment on the small barge. The Applicant must take immediate action to ensure that turbidity outside the curtained containment area is kept to a minimum at all times, even in adverse conditions, such as high winds, wave action or currents.
11. The use of chitosan or any flocculent to reduce turbidity in the lake is prohibited.
12. An emergency spill kit must be at the Project site at all times.
13. The Applicant is responsible for informing any contractors of the specific conditions contained in this WQC Order and maintaining compliance with the conditions of this Order.

Enforcement

1. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of CWA 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 Board or 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 Water Board deems appropriate, provided that the burden, including costs, of the reports shall 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.

CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION GRANTED

I hereby issue this Order certifying that any discharge from the referenced Project will comply with the applicable provisions of 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) of the CWA, and with other applicable requirements of state law. This discharge is also regulated under the Marina General Permit and 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 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 water quality certification order and (b) compliance with all applicable requirements of the Basin Plan.

General Information

1. Failure to abide by the conditions of this NOA and WQC Order could result in an enforcement action as authorized by provisions of the Porter-Cologne Water Quality Control Act.
2. You are responsible for informing any contractors of the waste discharge requirements, the specific conditions contained in this WQC Order, and for verifying compliance with these requirements.

If you have any questions or comments regarding this permit, please contact Tobi Tyler at (530) 542-5435 or Alan Miller, Chief, North Basin Regulatory Unit, at (530) 542-5430.



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc: Coleen Shade, R.O Anderson, Inc.
Kenneth Kasman , TRPA
Ninette Lee, California State Lands Commission, Sacramento
Bob Hosea, CA Dept. of Fish and Wildlife, Rancho Cordova
Kristine Hanson, USACOE, Reno
Jason Brush, Wetlands Regulatory Office (WTR-8), USEPA, Region 9
(via email at R9-WTR8-Mailbox@epa.gov)
Bill Orme, SWRCB, Division of Water Quality
(via email at Stateboard401@waterboards.ca.gov)