California Regional Water Quality Control Board
Lahontan Region

Linda S. Adams
Acting Secretary for Environmental Protection

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Edmund G. Brown Jr.
Governor

Robert W. Bianchi
c/o Vera Broder Silberstein, Conservatee
243 6th Street, Suite 220
Hollister, CA 95023

NOTICE OF APPLICABILITY OF GENERAL WASTE DISCHARGE REQUIREMENTS AND PROHIBITION EXEMPTION FOR THE SILBERSTEIN DRIVEWAY PROJECT, EL DORADO COUNTY, WATER QUALITY ORDER NO. 2004-0004-DWQ-09, WDID 6A091011001

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received a complete application for General Waste Discharge Requirements (WDRs) for *Dredged or Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of the Federal Jurisdiction* from Robert Bianchi (Applicant) for the Silberstein Driveway Project (Project). The U.S. Army Corps of Engineers has determined that the Project is not subject to Clean Water Act section 404 due to the proposed work not resulting in the discharge of dredged or fill material within waters of the U.S. Water Board staff have determined that the proposed project is not subject to CWA section 401 water quality certification, but is in accordance with the required conditions to be regulated under General Waste Discharge Requirements prescribed in State Water Resources Control Board Water Quality Order No. 2004-0004-DWQ. This Notice of Applicability (NOA) is hereby assigned Waste Discharger Identification (WDID) **6A091011001** and Water Quality Order No. **2004-0004-DWQ-09** for discharges associated with fill and disturbance in waters of the State associated with the above-referenced Project. Please use these reference numbers in all future correspondence regarding this Project.

By this Notice of Applicability, the Water Board is authorizing the fill-related discharges to waters of the State associated with the Project subject to compliance with the *General Waste Discharge Requirements for Dredged or Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of the Federal Jurisdiction.* All requirements contained in Water Quality Order No. 2004-0004-DWQ are applicable to the Project. A copy of Water Quality Order No. 2004-0004-DWQ is enclosed.

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	6A091011001
Applicant	Robert W. Bianchi on behalf of Vera Broder Silberstein, Conservatee 243 6th Stree, Suite 220 Hollister, CA 95023
Project Name	Silberstein Driveway Project
Project Purpose and Description	Construct a new paved driveway from Sawmill Road to an existing cabin. The driveway includes a bridge spanning Angora Creek, associated wetlands, Stream Environment Zones (SEZs), and 100-year floodplain, with the exception of three support pilings for the bridge.
Location (closest City & County)	1520 Sawmill Road, South Lake Tahoe, El Dorado County
Location Latitude/Longitude	Latitude: 38.873611; Longitude: 120.016944
Hydrologic Unit(s)	South Tahoe Hydrologic Area 634.10 in the Lake Tahoe Hydrologic Unit, 634.00
Project Area	15 acres (construction disturbance is less than one acre)
Receiving Water(s) Name	Angora Creek, and associated seasonal and emergent wetlands.
Water Body Type(s)	Creek, wet meadows and seasonal wetlands
Area of Water(s) of the U.S. (WOUS) within the project area	1.4 acre (44 linear feet)
Area of Permanent Fill in WOUS	5 square feet (0.0001 acre)
Federal Permit(s)	None required.
Non-Compensatory Mitigation	Site-specific Best Management Practices (BMPs) will be used throughout the construction period and for winterization to control erosion.
Compensatory Mitigation	None required.
Applicable Fees	$668.00 ($640.00 application fee + $28.00 for 0.0001 acre of permanent impacts to Federal Jurisdictional Waters at $2,752 per acre)
Fees Received	$668.00
Fees Due	$0.00

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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 prohibition:

The discharge or threatened discharge, attributable to new development or permanent disturbance in Stream Environment Zones or which is not in accordance with land capability, 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 wetland areas of tributary streams to Lake Tahoe. The project by its very nature will impact SEZ areas with proposed new permanent disturbance.

Prohibition Exemption

Resolution No. R6T-2008-031 delegates authority to the Water 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 required to provide access across SEZs to otherwise buildable sites.*

The primary purpose of the Silberstein Driveway Project is to provide access to an existing structure that was previously accessed through an adjacent parcel. This access through the adjacent parcel will expire September 30, 2011.

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

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

The Applicant proposes to install a bridge 100 feet long by 14 feet wide across the narrowest section of Angora Creek on the parcel. The bridge will be supported in the middle with three support piles measuring 14 inches in diameter. All of the proposed improvements will be outside the SEZ except for these three piles, which will either be driven or drilled from a staging area outside the SEZ and placed into the jurisdictional marsh area on the north side of Angora Creek. The area of permanent

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impacts within the SEZ, including marsh and creek, is five square feet. There is no reasonable alternative to the Project because access to the house on the south side of Angora Creek requires crossing Angora Creek and SEZ surrounding Angora Creek. The Applicant has minimized the impact to the extent practicable.

b) *Impacts are fully mitigated.*

Runoff from the proposed access road and bridge will be directed into infiltration areas along the driveway. All surface runoff from the proposed bridge will be drained to the two ends of the structure, collected and piped to infiltration basins. A small retaining wall is proposed southeast of the bridge to protect three existing trees which are to remain. All temporary Best Management Practices (BMPs) including erosion control fencing, tree protection barriers, and coir log rolls, will be installed prior to construction. A landing mat will be placed in the SEZ during the pile driving to reduce disturbance by soil compaction and prevent erosion into the SEZ. The existing roadway on the parcel will be restored by using the topsoil removed from the area of the new road followed by revegetation. The proposed impacts are fully mitigated.

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

To mitigate for the five square feet of permanent disturbance to the marsh and SEZ, the Applicant has agreed to pay mitigation fees to the California Tahoe Conservancy at a rate of $10 per square foot disturbance.

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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 must notify the Board and interested members of the public of intent to issue an exemption at least ten (10) days before the exemption is issued. A notice of exemption will be posted on the Water Board website and distributed through an interested persons mailing list allowing at least ten (10) days to submit comments.

GENERAL INFORMATION

1. The project must be constructed and operated in accordance with the project description in the information provided to the Water Board. Deviation from the

project description constitutes a violation of the conditions upon which this Notice of Applicability was granted.

2. Neither project construction activities nor operation of the project may cause a violation of the Water Quality Control Plan for the Lahontan Region, may cause a condition or threatened condition of pollution or nuisance, or cause any other violation of the California Water Code.

3. Any discharge to the unnamed ephemeral drainage and tributaries within the project area must be in accordance with the requirements contained in Water Quality Order No. 2004-0004-DWQ. Failure to abide by the conditions of the Water Quality Order No. 2004-0004-DWQ may result in enforcement action as authorized by the provisions of the California Water Code.

REVOCATION PROCEDURES

As stated in Water Quality Order No. 2004-0004-DWQ, coverage shall continue until revoked in writing by Water Board staff. The Applicant is responsible for notifying the Water Board in writing that the Project is complete, certifying that the required conditions are met, and requesting revocation of coverage. Coverage for the specific project will be revoked provided the conditions are met as certified in a Notice of Termination request (see Attachment 2 and Section II.C.16 of the enclosed Water Quality Order No. 2004-0004-DWQ). Criteria for termination of coverage include:

1. The construction project is complete and soil stabilization measures are in place and functioning.

2. Permanent Best Management Practices (BMPs) have been installed and are functional.

3. Water Board staff have inspected the site, if deemed necessary.

We look forward to working with you in your efforts to protect water quality. If you have any questions, please contact Tobi Tyler at (530) 542-5435, or Alan Miller at (530) 542-5430. Please use the WDID No. 6A181105005 in all subsequent correspondence concerning this Permit.

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 at (530) 542-5430.

HAROLD SINGER
EXECUTIVE OFFICER
Enclosure: Water Quality Order No. 2004-0004-DWQ

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cc: Pat Dobbs / Tahoe Regional Planning Agency
Amy Kennedy / California Department of Fish and Game, Rancho Cordova
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 / State Water Resources Control Board, Division of Water Quality
(via email at Stateboard401@waterboards.ca.gov)

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