

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment

of Regulations of the

Nevada Division of State Lands

The Nevada Division of State Lands will hold a public hearing at 4:00-6:00pm, on June 7, 2012, at the Edgewood Village Building D, 169 Highway 50, Stateline, NV 89449. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations that pertain to Chapter 321 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation or amendment.

Regulations found in NAC 321.305 through NAC 321.365 outline the process for which the Nevada Division of State Lands (NDSL) can provide funding to local jurisdictions and the Nevada Department of Transportation for the design and implementation of water quality and stream restoration projects at Lake Tahoe. Current regulations were adopted over 10 years ago and therefore some information is out of date. In addition, opportunities to modify regulation language were identified to improve the grant administration process. The proposed amendments address both out of date information and the grant administration process.

2. A statement explaining how to obtain the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063.

The revised text of the proposed permanent regulation amendments prepared by the Legislative Counsel pursuant to NRS 233B.063 are available from the Nevada Division of State Lands, 901 S Stewart Street, Suite 5003, Carson City, NV 89701, by calling (775) 684-2720, or by emailing eharrison@lands.nv.gov.

3. A statement identifying the methods used by the agency in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608.

A workshop was held on the afternoon of March 29, 2012 at the Incline Village Library. The workshop notice was mailed to all Nevada County Public Libraries for posting. In addition, a copy of the notice along with the proposed amendments were sent to local jurisdictions as well as the Nevada Department of Transportation who implement stormwater and stream restoration projects at Lake Tahoe. Lastly, the Nevada Department of Environmental Protection was notified and the notice was placed on the State Clearinghouse website. No comments were received indicating any potential effects on small business.

- 4. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:**
- a. Both adverse and beneficial effects; and**
 - b. Both immediate and long-term effects.**

There are no estimated economic effects of the regulation amendments on business. The regulations provide the mechanism for NDSL to provide funding to local jurisdictions and the Nevada Department of Transportation for water quality improvement projects as well as stream restoration projects. The proposed amendments will clarify and update existing regulatory language as well as the grant process.

- 5. The estimated cost to the agency for enforcement of the proposed regulation.**

The proposed regulation amendments do not have any costs for enforcement.

- 6. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.**

NAC 321.305 through NAC 321.365 are the only regulations that specifically provide guidance to NDSL for this grant funded program. There are no overlaps or duplications with other state, local or federal regulations.

- 7. If the regulation is required pursuant to federal law, a citation and description of the federal law.**

The regulation is not required pursuant to federal law.

- 8. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

There are no overlaps or duplications with federal regulations.

- 9. Whether the proposed regulation established a new fee or increased an existing fee.**

The amended regulations do not include a new fee and there are no existing fees.

Persons wishing to comment upon the proposed action of the Nevada Division of State Lands may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Nevada Division of State Lands. Written submissions must be received by the Nevada Division of State Lands on or before June 14, 2012. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada Division of State Lands may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada 89701, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be amended will be available at the Nevada Division of State Lands, 901 S Stewart Street, Suite 5003, Carson City, NV 89701, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

- 1) Carson City Library 900 North Rook Street, Carson City, Nevada 89702
- 2) Churchill County Library 553 South Main Street, Fallon, Nevada 89406
- 3) Clark County District Library 833 Las Vegas Boulevard North, Las Vegas, NV 89101
- 4) Douglas County Library 1625 Library Lane, Minden, Nevada 89423
- 5) Elko County Library 720 Court Street, Elko, Nevada 89801
- 6) Esmeralda County Library Corner of Crook & 4th Streets, Goldfield, NV 89013
- 7) Eureka County Library 210 South Monroe St., Eureka, NV 89316
- 8) Humboldt County Library 85 East 5th Street, Winnemucca, NV 89445
- 9) Lander County Library 625 South Broad Street, Battle Mountain, NV 89820
- 10) Lincoln County Library 63 Main Street, Pioche, NV 89043
- 11) Lyon County Library 20 Nevin Way, Yerington, NV 89447
- 12) Mineral County Public Library 110 1st Street, Hawthorne, NV 89415
- 13) Pershing County Library 1125 Central Avenue, Lovelock, NV 89419
- 14) Storey County Public Library 95 South R Street, Virginia City, NV 89440
- 15) Tonopah Public Library 167 Central Street, Tonopah, Nevada 89049
- 16) Washoe County Library 301 South Center Street, Reno, NV 89501
- 17) White Pine County Library 950 Campton Street, Ely, NV 89301

**PROPOSED REGULATION OF
THE STATE LAND REGISTRAR**

LCB File No. R040-12

April 25, 2012

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted-material]~~ is material to be omitted.

AUTHORITY: §§1-9, section 2 of chapter 361, Statutes of Nevada 1995, at page 907, as amended by section 4 of chapter 25, Statutes of Nevada 2001, at page 369, and section 3 of chapter 514, Statutes of Nevada 1999, at page 2629, as amended by section 5 of chapter 25, Statutes of Nevada 2001, at page 369.

A REGULATION relating to the Lake Tahoe Basin; revising provisions governing certain projects in the Lake Tahoe Basin; and providing other matters properly relating thereto.

Section 1. NAC 321.305 is hereby amended to read as follows:

321.305 “Committee” means the Technical Advisory Committee established ~~{pursuant to section 7 of the “Cooperative Agreement” entered into by the Division and the District on September 25, 1997.}~~ *by the Division pursuant to NAC 321.355.*

Sec. 2. NAC 321.330 is hereby amended to read as follows:

321.330 “Project” means a project that is ~~{authorized by law and may include a project for:~~

- ~~—1. The control of erosion;~~
- ~~—2. Treatment relating to}~~ *listed in the “Environmental Improvement Program” of the Tahoe Regional Planning Agency and may include a project for:*
 - 1. The improvement of water quality ~~{, or~~*
 - 3.} in the Lake Tahoe Basin; or*

2. The restoration or enhancement of natural watercourses or stream environment zones ~~†~~
~~→~~ in the Lake Tahoe Basin.

Sec. 3. NAC 321.333 is hereby amended to read as follows:

321.333 “Stream environment zone” means an area ~~†~~:

~~—1. The biological and physical characteristics of which are the result of the presence of surface or ground water; and~~

~~—2. That~~ *that* meets the criteria for a stream environment zone set forth ~~{in Volume III,~~

~~Stream Environment Zone Protection and Restoration Program in the “Water Quality~~

~~Management Plan for the Lake Tahoe Region” of} by ordinance of the Tahoe Regional Planning~~

~~Agency †, dated November 1988.} adopted pursuant to NRS 277.200.~~

Sec. 4. NAC 321.340 is hereby amended to read as follows:

321.340 1. ~~{The State Land Registrar will award grants of money from the sale of general obligation bonds of this State issued pursuant to section 1 of chapter 361, Statutes of Nevada 1995, to the Department of Transportation and local governments pursuant to NAC 321.300 to 321.365, inclusive. Such money must be distributed as follows:~~

~~—(a) Not more than one third of the money may be allocated to projects of the Department of Transportation.~~

~~—(b) At least two thirds of the money must be allocated to projects of local governments.~~

~~—2.} The State Land Registrar will, pursuant to NAC 321.300 to 321.365, inclusive:~~

(a) Award grants of money from the sale of general obligation bonds of this State issued pursuant to section 1 of chapter 514, Statutes of Nevada 1999, *and section 1 of chapter 431,*

Statutes of Nevada 2009, to; and

(b) Enter into contracts or agreements in accordance with section 3 of chapter 514, Statutes of Nevada 1999, as amended by section 5 of chapter 25, Statutes of Nevada 2001, with, ↪ state agencies, local governments, nonprofit organizations and other persons or entities to carry out projects . ~~relating to water quality, the control of erosion and the restoration or enhancement of streams in the Lake Tahoe Basin.~~

~~3-} 2.~~ An applicant for a grant of money pursuant to NAC 321.300 to 321.365, inclusive, shall provide a matching contribution to the project of not less than 25 percent of the total cost of the project, except that a state agency is not required to provide a matching contribution.

Sec. 5. NAC 321.345 is hereby amended to read as follows:

321.345 1. The State Land Registrar will periodically:

(a) Solicit applications from state agencies, local governments, nonprofit organizations and other persons or entities for grants of money from the sale of general obligation bonds issued pursuant to ~~section 1 of chapter 361, Statutes of Nevada 1995, and general obligation bonds issued pursuant to~~ section 1 of chapter 514, Statutes of Nevada 1999 ~~{-}~~ , *and section 1 of chapter 431, Statutes of Nevada 2009*; and

(b) Establish deadlines for the submission of those applications.

2. Before a state agency, a local government, a nonprofit organization or any other person or entity may submit an application for a grant of money for a proposed project, the state agency, local government, nonprofit organization or other person or entity must submit a preapplication to the Division for an initial determination *by the State Land Registrar* of the eligibility of the proposed project to qualify for a grant. In making an initial determination of the eligibility of a

proposed project to qualify for a grant, the State Land Registrar will consider the following criteria, without limitation:

(a) Whether the proposed project is listed in the “Environmental Improvement Program” of the Tahoe Regional Planning Agency; ~~and~~

(b) Whether the proposed project is of benefit to the general public as determined by the State Land Registrar ~~and~~; *and*

(c) Whether the project proposes treating stormwater runoff that impacts surface water bodies or Lake Tahoe.

↳ Upon the initial determination by the State Land Registrar that a project is eligible to qualify for a grant, the applicant may submit an application for a grant of money for the proposed project.

3. An application by a *state agency*, a local government, a nonprofit organization or any other person or entity for a grant pursuant to NAC 321.300 to 321.365, inclusive, must be submitted to the ~~District~~ *Division* and include, without limitation:

(a) A completed application package on forms provided ~~by the District and approved~~ by the Division;

(b) The amount of money requested for the project;

(c) The total projected cost of the project, including, without limitation, the estimated costs for planning, design, acquisition and construction;

(d) *A detailed description of:*

(1) If the applicant is a local government, a nonprofit organization or any other person or entity other than a state agency, the matching contribution that is required for the project pursuant to NAC 321.340; or

(2) If the applicant is a state agency, the matching contribution obtained for the project, if any;

(e) A detailed description of the project;

~~[(e) Proof of any title to]~~

(f) Identification of any land, lease or easement that ~~is required~~ must be acquired to carry out the project;

~~[(f)]~~ **(g) A map of the location of the project;**

~~[(g)]~~ **(h) A statement regarding the conformity of the project to all applicable local and regional land use plans;**

~~[(h)]~~ **(i) Evidence that the project is included within the “Environmental Improvement Program” of the Tahoe Regional Planning Agency;**

~~[(i)]~~ **(j) A plan for the operation and maintenance of the project for a period of not less than 20 years ; ~~including, without limitation, the identity of the person who will operate the project and provide the maintenance;~~**

~~—(j) An itemized list of the costs of the project in accordance with the descriptions of work and unit prices set forth in the “Project Cost Estimator” which is hereby adopted by reference. A copy of the “Project Cost Estimator” may be obtained without charge:~~

~~—(1) In person, at the:~~

~~— (I) Nevada Tahoe Conservation District Office, 870 Emerald Bay Road, South Lake Tahoe, California; or~~

~~— (II) Division of State Lands, 333 West Nye Lane, Suite 118, Carson City, Nevada;~~

~~— (2) By telephone, at (530) 573-2757 or (775) 687-4363; or~~

~~— (3) By mail, at the Nevada Tahoe Conservation District Office, P.O. Box 10529, South Lake Tahoe, California 96158;}~~

(k) *If the project will impact how stormwater is transmitted to surface water bodies and Lake Tahoe, a detailed description of the impact;*

(l) A detailed description of how the project conforms to the guidelines and objectives described in the application package; and

~~{(l)}~~ **(m) A detailed description of the environmental and public benefits of the project.**

~~{4. An application by a state agency for a grant pursuant to NAC 321.300 to 321.365, inclusive, must be submitted to the Division and include, without limitation:~~

~~— (a) A completed application package on forms provided by the Division;~~

~~— (b) The amount of money requested for the project;~~

~~— (c) The total projected cost of the project, including, without limitation, the estimated costs for planning, design, acquisition and construction;~~

~~— (d) A detailed description of the project;~~

~~— (e) Proof of any title to land, lease or easement that is required to carry out the project;~~

~~— (f) A statement regarding the conformity of the project to all applicable local and regional land use plans;~~

~~—(g) Evidence that the project is included within the “Environmental Improvement Program” of the Tahoe Regional Planning Agency;~~

~~—(h) A plan for the operation and maintenance of the project for a period of not less than 20 years, including, without limitation, the identity of the person who will operate the project and provide the maintenance;~~

~~—(i) A detailed description of how the project conforms to the guidelines and objectives described in the application package; and~~

~~—(j) A detailed description of the environmental and public benefits of the project.~~

Sec. 6. NAC 321.355 is hereby amended to read as follows:

321.355 1. The ~~{District}~~ *State Land Registrar will appoint a Technical Advisory Committee. The members of the Committee serve at the pleasure of the State Land Registrar.*

2. *For each periodic solicitation of applications by the State Land Registrar pursuant to subsection 1 of NAC 321.345, the Committee shall ~~{evaluate}~~ :*

(a) Evaluate the feasibility of each project for which the Division has received an application pursuant to the solicitation and the estimated costs and benefits of the project pursuant to the following criteria:

~~{+}~~ **(1)** The benefit to the water quality of Lake Tahoe, including, without limitation, ~~{whether}~~ *how* the project:

~~{a}~~ **(I)** Will address a significant problem relating to ~~{soil erosion or water quality or both soil erosion and}~~ water quality;

~~{b}~~ **(II)** Will result in a demonstrated ~~{improvement in water quality}~~;

~~—(c) Is listed in the “Environmental Improvement Program” of the Tahoe Regional Planning Agency; and~~

~~—(d) Will reduce significantly the amount of untreated runoff that is currently being deposited in} reduction in the total maximum daily load for stormwater pollutants of concern as determined by the Division of Environmental Protection of the State Department of Conservation and Natural Resources, in surface water bodies and Lake Tahoe }.~~

~~—2.} ; and~~

(III) Will address impaired stream environment zones.

(2) The adequacy of the design of the project, including, without limitation, whether the proposed project:

~~{(a) Uses proven, effective and}~~

(I) Incorporates cost-effective }techniques to address the control of soil erosion and treatment relating to water quality;

~~—(b)} measures and innovative approaches to target stormwater pollutants; and~~

(II) Restores, preserves and enhances }vegetation and} stream environment zones to the maximum extent possible . }

~~—(c) Uses improvements that reflect aesthetic considerations; and~~

~~—(d) Uses bioengineering.~~

~~—3.} (3) The comprehensive approach of the project, including, without limitation, whether all identifiable }aspects of the problem of soil erosion and treatment relating to the water quality of the runoff in} pollutant issues relating to water quality are considered in the project . }area or the watershed are covered in the project.~~

~~—4.}~~ **(4)** The long-term viability of the project, including, without limitation, the ability of the applicant to *inspect*, operate and maintain the project.

~~{5.—The cost-effectiveness of the project, including, without limitation, the potential of the project to attract financing in addition to the grant.~~

~~—6.}~~ **(5)** The ability of the applicant to carry out the project in a timely manner.

~~{7.—The ability of the portion of the project that will be paid for with money from the grant to achieve benefits to water quality independently of the other components of the project.~~

~~—8.—The ability of the project to be used as a model for future projects, including, without limitation, whether the project:~~

~~—(a) Uses biotechnology;~~

~~—(b) Combines proven and innovative approaches; and~~

~~—(c) Includes a monitoring program measuring}~~

(6) *If appropriate, whether the project includes any monitoring system for assessing the effectiveness of the project* ~~{.~~

~~—9.}~~ *and the project's components.*

(7) The amount of cooperation and support for the project from persons other than the applicant, including, without limitation:

~~{(a)}~~ **(I)** Federal, state and local governmental agencies; and

~~{(b)}~~ **(II)** Private landowners.

~~{10.}~~ **(8)** The amount of a matching contribution to the project that will be provided by the applicant ~~. {, which must equal at least 25 percent of the cost of the project.~~

~~{11.—The adequacy of the plan for maintenance of the project.~~

~~12.~~ (9) The benefits to the public.

~~13.~~ (10) The extent that the project meets the objectives and guidelines set forth in the application package provided by the ~~District~~ Division.

(b) Recommend to the State Land Registrar the amount of a grant, if any, for the project.

(c) Prepare a preliminary list that ranks projects for which applications have been submitted pursuant to a solicitation in order of priority for the awarding of grants.

3. *The Division shall make the preliminary list of prioritized projects prepared by the Committee pursuant to paragraph (c) of subsection 2 available for public review and comment.*

4. *The State Land Registrar will hold one or more hearings with respect to a preliminary list if the State Land Registrar deems it necessary.*

5. *The State Land Registrar will:*

(a) Prepare a final list of prioritized projects for the award of grants based on public comments and any recommendations received from the Committee; and

(b) Make the final list of prioritized projects available to the public.

Sec. 7. NAC 321.360 is hereby amended to read as follows:

321.360 The State Land Registrar and the recipient of a grant shall enter into an agreement which must require that the recipient shall:

1. If the recipient is not a state agency, provide a matching contribution to the proposed project of not less than 25 percent of the cost of the project;

2. *If the recipient is a state agency that has obtained a matching contribution, provide the matching contribution to the proposed project;*

3. Operate and provide maintenance for the project for not less than 20 years after the project is completed;

3. Agree to any additional conditions determined necessary by the State Land Registrar to carry out the purposes of this chapter, including, without limitation, the posting of a performance bond by the applicant; and

4. Obtain such easements for conservation or other interests in land as are necessary to carry out the project. ~~{The easements must be approved by the State Land Registrar.}~~ The State Land Registrar may require that the easement for conservation or other interests in land be held by this State. As used in this subsection, “easement for conservation” has the meaning ascribed to it in NRS 111.410.

Sec. 8. NAC 321.365 is hereby amended to read as follows:

321.365 1. Except as otherwise provided in subsection 2, the recipient of a grant pursuant to NAC 321.300 to 321.365, inclusive, may use the money from the grant to pay for:

(a) All expenses related directly to the project, including, without limitation, expenses related to the *planning*, design and construction of the project;

(b) Monitoring the effectiveness of projects funded pursuant to section 3 of chapter 514, Statutes of Nevada 1999, if the State Land Registrar determines such monitoring to be necessary; and

(c) The administrative costs of the project, not to exceed ~~{3}~~ **5 percent of the ~~{total}~~ cost of the project ~~{}~~ *to the State*.**

2. The recipient of a grant pursuant to NAC 321.300 to 321.365, inclusive, shall not use the money from the grant to pay for:

- (a) Any planning activities which are not directly related to the design , ~~land~~ engineering *and implementation* of the project;
- (b) The purchase of new equipment, unless the State Land Registrar has determined that the purchase of the new equipment is necessary to monitor the effectiveness of the project;
- (c) Paving, unless the paving is ~~recommended~~ *approved* by the ~~Committee to remedy erosion;~~ *State Land Registrar to address water quality issues;*
- (d) The acquisition of land, unless such an acquisition is determined by the State Land Registrar to be an integral component of the project;
- (e) Any work required by a public agency as mitigation or as a condition of the approval of any other project;
- (f) Any component of the project that is determined by the State Land Registrar not to benefit the public;
- (g) Installation of best management practices on private property as required by the Tahoe Regional Planning Agency; or
- (h) Any other expenses determined by the State Land Registrar not to be necessary to carry out the purposes of this chapter.

Sec. 9. NAC 321.310, 321.335 and 321.350 are hereby repealed.

TEXT OF REPEALED SECTIONS

321.310 “District” defined. (§ 2 of ch. 361, Stats. 1995, as amended by § 4 of ch. 25, Stats. 2001; § 3 of ch. 514, Stats. 1999, as amended by § 5 of ch. 25, Stats. 2001) “District” means the Nevada-Tahoe Conservation District.

321.335 “Cooperative Agreement” adopted by reference. (§ 2 of ch. 361, Stats. 1995, as amended by § 4 of ch. 25, Stats. 2001; § 3 of ch. 514, Stats. 1999, as amended by § 5 of ch. 25, Stats. 2001)

1. The “Cooperative Agreement” entered into by the Division and the District on September 25, 1997, is hereby adopted by reference.

2. A copy of the “Cooperative Agreement” may be obtained without charge:

(a) In person, from the Division of State Lands, 333 West Nye Lane, Suite 118, Carson City, Nevada.

(b) By telephone, at (775) 687-4363 or (775) 687-4735.

(c) By mail, from the State Land Registrar, Division of State Lands, Capitol Complex, Carson City, Nevada 89710.

321.350 Evaluation and prioritization of projects. (§ 2 of ch. 361, Stats. 1995, as amended by § 4 of ch. 25, Stats. 2001; § 3 of ch. 514, Stats. 1999, as amended by § 5 of ch. 25, Stats. 2001) The District shall:

- 1. Evaluate the feasibility of each project for which it has received an application and evaluate its estimated costs and benefits pursuant to the criteria set forth in NAC 321.355. In its review of each project, the District shall use the technical advice of the Committee.**
- 2. Develop a preliminary list which ranks projects for which applications have been submitted in order of priority.**
- 3. Make the preliminary list of prioritized projects available for public review.**
- 4. Conduct at least one public hearing regarding each preliminary list of prioritized projects.**

The District may revise each preliminary list after the public hearing.

- 5. Submit a final list of prioritized projects to the State Land Registrar with a written evaluation of each project which addresses the criteria set forth in NAC 321.355.**