

STATE OF UTAH
DIVISION OF WATER QUALITY
DEPARTMENT OF ENVIRONMENTAL QUALITY
SALT LAKE CITY, UTAH

Section 401 Water Quality Certification No. DWQ-2025-11002

Project Proponents: Mike MacFarlane
Project Manager
Leading Tech Development
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Project: Leading Tech Development (Project Proponent) is proposing to build a commercial development on a 4.72-acre parcel at the northwest intersection of US Highway 91 and South 1100 West in Brigham City, Utah. The Leading Tech Development 4.72-acre parcel (Proposed Project) includes construction of a parking lot, oil-change station, four drive-thru restaurants, associated driveways, and supporting utilities on land previously used for agriculture.

The Proposed Project will permanently impact 2.44 acres of Palustrine Emergent Wetlands (PEM), including 0.28 acres that were previously filled without a permit between 2017 and 2020. The Project Proponent is now seeking permit coverage for both the previous and anticipated wetland impacts. Construction activities will require filling wetlands primarily to accommodate buildings, parking areas, and utility installations.

Four alternative locations were evaluated but found unsuitable for the project's needs. The project design incorporates measures to avoid and minimize wetland impacts where possible, such as installing silt fences and applying Best Management Practices (BMPs) to protect water quality. To offset wetland loss, compensatory mitigation will be provided through the purchase of credits from the Machine Lakes Mitigation Bank.

Location: US Hwy 91 and South 1100 West in Brigham City, Box Elder County, Utah at approximately Latitude 41.487224, Longitude -112.036295.

Watercourse(s): Palustrine Emergent Wetlands (PEM) within Box Elder County.

USACE Section 404: SPK-2024-00758

Effective Date: Month, Day, Year

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I. Definitions

- A. **Beneficial Use Classes** are how waters of the state are grouped and classified to protect against controllable pollution the beneficial uses designated within each class. UAC R317-2-6.
- B. **Designated Beneficial Uses** means a water's present most reasonable uses, grouped by use classes to protect the uses against controllable pollution. Beneficial uses designated within each class are described in Utah Administrative Code (UAC) R317-2-6 and waterbodies beneficial uses can be found in UAC R317-2-13. For the purposes of this document, the term "designated beneficial uses" will be used to describe all uses required to be protected by Utah water quality standards and antidegradation policy.
- C. **Existing Uses** *"means those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards."* UAC R317-1-1. *"If a situation is found where there is an existing use which is a higher use (i.e., more stringent protection requirements) than that current designated use, the Director will apply the water quality standards and anti-degradation policy to protect the existing use."* UAC R317-2-3.
- D. **Level I Antidegradation Review (ADR):** *"is conducted to ensure that existing uses will be maintained and protected."* UAC R317-2-3.5
- E. **Level II Antidegradation Review (ADR)** is conducted to ensure that water quality degradation is necessary and that the proposed activity is documented to be both economically and socially important. Level II ADRs are required for any activity that's impacts are not considered temporary and limited and is likely to result in degradation of water quality.
- F. **Project Proponent** *"means the applicant for license or permit or entity seeking certification."* 40 CFR §121.1.
- G. **Total Maximum Daily Load (TMDL)** *"means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources."* UAC R317-1-1
- H. **Waters of the United States (WOTUS)** means waterbodies subject to the provisions of the Clean Water Act.
- I. **303(d) list** is a state's list of impaired and threatened waters, including but not limited to; streams, lakes, and reservoirs adopted to implement the Clean Water Act Section 303(d).

II. Acronyms

AU – Assessment Unit
BMPs – Best Management Practices
CFR – Code of Federal Regulations
CWA – Clean Water Act
DEQ – Utah Department of Environmental Quality
DWQ – Utah Division of Water Quality
EPA – Environmental Protection Agency
mg/L – milligrams per liter
MS4 – Municipal Separate Storm Sewer System
NOI – Notice of Intent
NTU – Nephelometric Turbidity Units
PEM – palustrine emergent
ROW – right of way
SWPPP – stormwater pollution prevention plan
TMDL – Total Maximum Daily Load
TSS – total suspended solids
UAC – Utah Administrative Code
UPDES – Utah Pollutant Discharge Elimination System
USACE – U.S. Army Corps of Engineers
WQC – Water Quality Certification
WQS – Utah Water Quality Standards

III. Executive Summary

Pursuant to Section 401 of the CWA 33 U.S.C. Section 1251 et seq., the DWQ grants Water Quality Certification (Certification) to Leading Tech Development (Project Proponent) for the proposed Leading Tech Development 4.72-acre parcel (Proposed Project) in Brigham City, Box Elder County, Utah. Certification is subject to the conditions outlined in this document and adherence to any U.S. Army Corps of Engineers (USACE) Section 404 Permit Conditions. The conditions outlined in this Certification are necessary to assure compliance with effluent limitations, monitoring requirements, and/or other applicable laws and regulations adopted for state primacy of the CWA.

DWQ's conditions are based on and are necessary to comply with applicable state rules. Specifically, the following Utah rules represent overarching considerations that require the conditions outlined by this document to apply to the USACE Section 404 Permit: Utah's rules promulgating standards of quality for waters of the State affirm "*it shall be unlawful and a violation of these rules for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by assigned classes or to cause any of the applicable standards to be violated*" UAC R317-2-7.1.a. Additionally, "*all actions to control waste discharges under these rules shall be modified as necessary to protect downstream designated uses*" UAC R317-2-8. As stated in UAC R317-15-6.1 the Director will ordinarily consider whether the proposed discharge "*impairs the designated beneficial use classifications (e.g., aquatic life, drinking water, recreation) in Section R317-2-6*" UAC R317-15-6.1.A.1., "*exceeds water quality criteria, either narrative or numeric, in Section R317-2-7*" UAC R317-15-6.1A.2. or "*fails to meet the antidegradation (ADR) requirements of Section R317-2-7*" UAC R317-15-6.1.A.3.

On October 21, 2025, Travis Taylor with Bio-West submitted a pre-filing meeting request and a 401 Certification application on behalf of Leading Tech Development for the Proposed Project. A pre-filing meeting was held virtually on October 30, 2025. A 401 Certification was submitted on November 21, 2025, and determined to be completed on January 13, 2026. Connor Jones with the USACE established the reasonable period of time for Certification to be 6 months from the complete application. The certification will be considered waived if DWQ does not act on the request by July 13, 2026.

IV. Background

The Project Proponent is proposing to build a commercial development on a 4.72-acre parcel in Brigham City, Utah. The commercial property will be located at the Northwest intersection of US Highway 91 and South 1100 West in Box Elder County. The Proposed Project includes the construction of a parking lot, an oil-change station, four drive-thru restaurants, and driveway entrances and exits. The project area is a 4.72-acre parcel owned by a private party which was previously used for farming and agricultural purposes. The Project Proponent indicated that, because of the commercial and residential growth in Brigham City, the project is needed. The Proposed Project is necessary to provide increased food and car service options to residents and motorists. Additionally, the Project Proponent asserts that, because of the service station's location, it will alleviate traffic congestion directly north of US Highway 91.

The Project Proponent is seeking a permit for unpermitted activity and additional PEM wetland impacts to complete the Proposed Project. Based on Arial Imagery, approximately 0.28 acres of PEM wetlands

were filled between 2017-2020 without the required USACE permit coverage. The Proposed Project will permanently impact 2.44 acres of PEM wetlands. Fill material being discharged into the wetlands will consist of pavement layers of asphalt, sand, and gravel, as well as earthen borrow material, if needed. The impacts to wetlands are from the Proposed Project buildings and parking areas. However, some of the permanent wetland impacts are due to the water and sewer lines, as well as the storm drainage pipe infrastructure that will need to be installed. All pipes installed will be made of PVC.

The Project Proponent analyzed four alternatives in the vicinity of the project area, none of which met the project's purpose and need. Project engineers have incorporated avoidance and minimization measures to be implemented during construction. The Proposed Project has been modified to avoid wetlands within the southern portion of the property to the greatest extent practicable. The Project Proponent asserts that BMPs and erosion control measures will be utilized to prevent the degradation of water quality. All required UPDES Permits will be obtained prior to construction. Silt fences will be used to prevent impacts to the surrounding wetlands. Machine Lakes Mitigation Bank credits will be purchased by the Project Proponent to fulfill the required compensatory mitigation.

V. Aquatic Resource Impacts

All Waters of the State of Utah (defined in UAC R317-1-1) are protected from pollutant discharges that affect water quality by narrative standards (see UAC R317-2-7.2); broadly, discharges should not become offensive or cause undesirable conditions in human health effects or aquatic life. In addition, some particularly sensitive classes of water are further protected from deleterious effects of specific pollutants by application of numeric criteria to designated beneficial uses of that waterbody. Listed below are the water features, grouped by AUs, impacted by the Project, their associated designated beneficial uses (see UAC R317-2-6 and UAC R317-2-13) and any impairments:

A. PEM Wetlands ¹

1. Beneficial Use Designations

- a. Class 2B: Protected for infrequent primary contact recreation. Also protected for secondary contact recreation where there is a low likelihood of ingestion of water or a low degree of bodily contact with the water. Examples include, but are not limited to, wading, hunting, and fishing.
- b. Class 3D: Protected for waterfowl, shore birds and other water-oriented wildlife not included in Classes 3A, 3B, or 3C including the necessary aquatic organisms in their food chain.

2. Impairments and TMDLs: N/A

3. Antidegradation Review

The PEM wetlands are considered a Category 3 water for antidegradation purposes. Category 3 waters in Utah are waters where “point source discharges are allowed and degradation may occur, pursuant to the conditions and review procedures outlined in Section 3.5”, as described in UAC R317-2-3.4. The antidegradation policy allows for discharges where the water quality effects of the Proposed Project are determined to be temporary and limited after consideration of the factors identified in UAC R317-2-3.5.b.4., and where BMPs would be employed to minimize pollution effects.

¹ In UAC R317-2-13, all waters not specifically classified are presumptively classified 2B and 3D.

VI. Certification Conditions

- A. All activities with a potential discharge to WOTUS must implement and maintain BMPs to fully protect the waterbodies assigned beneficial use(s).
- B. Hazardous and otherwise deleterious materials (e.g. oil, gasoline, chemicals, trash, sawdust, etc.) shall not be stored, disposed of, or accumulated or conveyed through adjacent to or in immediate vicinity WOTUS unless adequate measures and controls are provided to ensure those materials would not enter WOTUS in the State of Utah. **Any spill or discharge of oil or other substance which may cause pollution to WOTUS in the State of Utah, including wetlands, must be immediately reported to the Utah DEQ Hotline at (801) 536-4123, a 24-hour phone number.**
- C. All activities conducted in WOTUS in the State of Utah shall be conducted in the “dry” to the maximum extent practicable, by diverting flow utilizing cofferdams, berms constructed of sandbags, clean rock (containing no fine sediment) or other non-erodible, non-toxic material. All diversion materials shall be removed at the completion of the work. The Project Proponent shall consider conducting instream work during low flow conditions and work shall not be conducted during spawning season. Additionally, construction machinery shall not be operated within WOTUS in the State of Utah unless it is unavoidable, in which case it shall be conducted in the “dry” as stated above. The work shall be conducted in a manner to minimize the duration of the disturbance, turbidity increases, substrate disturbance, and minimize the removal of riparian vegetation. Construction machinery shall be clean to prevent the transfer of aquatic invasive species.
- D. Construction activities that disturb either greater than one acre of land, or less than one acre of land and is part of a larger common plan of development that would disturb greater than one acre, are required to obtain coverage under the Utah Pollutant Discharge Elimination System (UPDES) Storm Water General Permit for Construction Activities (Permit No. UTRC00000^[2]). The permit requires the development of a Storm Water Pollution Prevention Plan (SWPPP) to be implemented and updated from the commencement of any soil disturbing activities at the site, until final stabilization of the project. The SWPPP should include, but not be limited to, final site maps and legible plans, location of storm water outfalls/discharges, and information pertaining to any storm water retention requirements.
- E. Dewatering activities, if necessary during construction, may require coverage under the UPDES General Permit for Construction Dewatering (Permit No. UTG070000^[3]) applies to the construction dewatering of uncontaminated groundwater or surface water sources due to construction activities; hydrostatic testing of pipelines or other fluids vessels; water used in disinfection of drinking water vessels; and other similar discharges in the State of Utah that have no discharge of process wastewater. The permit requires submission of a Notice of Intent (NOI); maintenance of a discharge log; development and implementation of a dewatering control plan; and monitoring for Flow, Oil & Grease, pH, Total Suspended Solids (TSS), and Chlorine (required when chlorinated water is used and discharged to a stream with a chlorine standard). Discharge Monitoring Reports (DMRs) are required to be submitted monthly, regardless of whether a site discharges in a particular month.

² <https://deq.utah.gov/water-quality/general-construction-storm-water-updes-permits#general-permit>

³ <https://deq.utah.gov/water-quality/general-construction-storm-water-updes-permits#construction-dewatering-hydrostatic-testing>

VII. Condition Justification and Citation

- A. Implementation of BMPs. Project approval is conditioned on implementation of BMPs, which are required to be implemented by the antidegradation policy in UAC R317-2-3, water quality standards may be violated unless appropriate BMPs are incorporated to minimize the erosion-sediment and nutrient load. Violations of water quality standards could cause a waterbody to fail to meet its designated beneficial uses. As required by Utah's antidegradation policy UAC R317-2-3.1 "*Existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses.*" As stated in UAC R317-15-6.1 the Director will ordinarily consider whether the proposed discharge "*impairs the designated beneficial use classifications (e.g., aquatic life, drinking water, recreation) in Section R317-2-6*" UAC R317-15-6.1.A.1., "*exceeds water quality criteria, either narrative or numeric, in Section R317-2-7*" UAC R317-15-6.1.A.2. or "*fails to meet the antidegradation (ADR) requirements of Section R317-2-7*" UAC R317-15-6.1.A.3 when making a Certification decision. If appropriate BMPs are incorporated, there is assurance that the Project will not violate water quality standards or impair a waterbody's beneficial use.

Citation(s): UAC R317-2-3.1, UAC R317-15-6.1, UAC R317-15-6.1.A.1., UAC R317-15-6.1.A.2., UAC R317-15-6.1.A.3.

- B. Proper Storage of Hazardous and Otherwise Deleterious Materials. Project approval is conditioned on proper storage of hazardous and otherwise deleterious materials, and notification of any discharge of those materials, to assure that water quality and narrative standards are not violated. When projects are occurring in or around waterbodies, there is a chance for pollutants to inadvertently be spilled/discharged into waterbodies due to increased risk from project related activities (e.g. presence of machinery, onsite chemical and gas storage, improper waste storage, and failure to use proper BMPs). To prevent or reduce the possibility that hazardous and otherwise deleterious materials are inadvertently discharged into a waterbody, Project Proponents must not store, dispose of, or accumulated such materials adjacent to or in immediate vicinity of WOTUS unless adequate measures and controls are provided to ensure those materials would not enter waters of the State. If there is a discharge to WOTUS in the State of Utah, it must be immediately reported to the DEQ, as stated in Utah Code Section 19-5-114. An inadvertent discharge of pollutants can cause violations with Utah's Narrative Standards, which states "*It shall be unlawful, and a violation of these rules, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures; or determined by biological assessments in Subsection R317-2-7.3*" UAC R317-3-7.2. Utah's rules promulgating standards of quality for waters of the State affirm "*it shall be unlawful and a violation of these rules for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by assigned classes or to cause any of the applicable standards to be violated*" UAC R317-2-7.1.a. Discharges of pollutants, even inadvertently, could cause both a violation of applicable water quality standards and possibly interfere with a waterbodies designated uses.

Citation(s): Utah Code § 19-5-114, UAC R317-3-7.2, UAC R317-2-7.1.A, UAC R317-15-6.1., UAC R317-15-6.1.A.1., UAC R317-15-6.1A.2.

- C. Dry Conditions to the Maximum Extent Practicable. Project approval is conditioned on conducting activities under dry conditions to the maximum extent practicable to assure that water quality standards are not exceeded. Construction machinery used within a waterbody can cause significant impacts to water quality if adequate precautions are not taken. When it is unavoidable to operate construction machinery within the waterbody the Project Proponent should focus on minimizing the duration of the disturbance, turbidity increase, substrate disturbance, removal of riparian vegetation, and work shall be conducted in the “dry” to the maximum extent practicable. Minimizing the duration of impact reduces the chance that the impacts will accumulate and cause significant impacts to water quality. Minimizing turbidity increases is important because the State of Utah has numeric water quality criteria for turbidity in certain use designations, which could be violated if the Project Proponent does not take proper steps to minimize the increases. Water quality criteria for turbidity will be violated if there is an increase of 10 NTUs in waterbodies with designated uses related to recreation and if there is an increase of 10 NTUs (class 3A and 3B) or 15 NTUs (class 3C and 3D) in waterbodies with aquatic wildlife designated uses. UAC R317-2-14.1 and UAC R317-2-14.2. Conducting work in the “dry” to the maximum extent practicable will help reduce the risk of the numeric criteria for turbidity to be exceeded, as well as reduce the risk of a significant sediment load being transported downstream. Discharges of sediment can not only violate numeric criteria, but also, risk violating Utah’s narrative standard *“It shall be unlawful, and a violation of these rules, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures; or determined by biological assessments in Subsection R317-2-7.3.”* UAC R317-2-7.2. Violations of numeric and narrative criteria could cause a waterbody not to meet its designated beneficial use and a transport of sediment downstream could prevent a downstream waterbody from meeting its designated beneficial uses. As required by Utah’s antidegradation policy UAC R317-2-3.1 *“Existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses”*. Additionally, *“All actions to control waste discharges under these rules shall be modified as necessary to protect downstream designated uses”* UAC R317-2-8. As stated in UAC R317-15-6.1 the Director will ordinarily consider whether the proposed discharge *“impairs the designated beneficial use classifications (e.g., aquatic life, drinking water, recreation) in Section R317-2-6”* UAC R317-15-6.1.A.1., *“exceeds water quality criteria, either narrative or numeric, in Section R317-2-7”* UAC R317-15-6.1A.2. or *“fails to meet the antidegradation (ADR) requirements of Section R317-2-7”* UAC R317-15-6.1.A.3 when making a certification decision.

Citation(s): UAC R317-2-3.5., UAC R317-2-7.1.A., UAC R317-2-14.1, UAC R317-2-14.2., UAC R317-2-7.1.a., UAC R317-2-7.2., UAC R317-2-3.1, UAC R317-2-8. , UAC R317-15-6.1, UAC R317-15-6.1.A.1, UAC R317-15-6.1A.2., UAC R317-15-6.1.A.3.

- D. UPDES Storm Water General Permit for Construction Activities (Permit No. UTRC00000). UAC R317-8-2.5, gives the Director authority to issue general permits to cover specific categories of discharges, including storm water and construction dewatering that is discharged to a surface water. According to UAC

R317-8-3.9 (6)(d), construction activities that result in a land disturbance of equal to or greater than one acre, including clearing, grading, and excavation are “industrial activities” under UAC R317-8-3.9(1)(a) and are therefore required to obtain and comply with a UPDES Permit for storm water discharges. This only applies to projects that meet or exceed one acre of disturbance.

Citation(s): UAC R317-8-3.9(6)(d) and UAC R317-8-3.9(1)(a)

- E. UPDES General Permit for Construction Dewatering (Permit No. UTG070000). UAC R317-8-2.5, gives the Director authority to issue general permits to cover specific categories of discharges, including storm water and construction dewatering that is discharged to a surface water. Under the authority granted by UAC R317-8-2.5, the Director issued the General Permit for Construction Dewatering and Hydrostatic Testing, UPDES Permit No. UTG070000 renewed and effective as of February 1, 2020. UPDES Permit No. UTG070000 applies to construction dewatering of uncontaminated groundwater or surface water sources due to construction activities, hydrostatic testing of pipelines or other fluids vessels, water used in disinfection of drinking water vessels and other similar discharges in the State of Utah that have no discharge of process wastewater. This only applies to projects that require dewatering and discharge to surface water.

Citation(s): UAC R317-8-2.5

VIII. Fees

- A. The legislatively mandated fee for the 2026 fiscal year [⁴] is \$135.00/hour for review and issuance of the Section 401 Water Quality Certification. An invoice will be sent with the final Certification decision, and your payment is due within 30 days of receipt.

IX. Disclaimers

- A. The Project Proponent must acquire all necessary easements, access authorizations and permits to ensure they are able to implement the Project. This Section 401 Certification does not convey any property rights or exclusive privileges, nor does it authorize access or injury to private property.
- B. This Section 401 Certification does not preclude the Project Proponent’s responsibility of complying with all applicable Federal, State or local laws, regulations or ordinances, including water quality standards. Permit coverage does not release the Project Proponent from any liability or penalty, should violations to the permit terms and conditions or Federal or State Laws occur.
- C. A Project within a Municipal Separate Storm Sewer System (MS4) jurisdiction, must comply with all the conditions required in that UPDES MS4 Permit and associated ordinances. No condition of this Section 401 Certification shall reduce or minimize any requirements provided in the MS4 Permit. In the case of conflicting requirements, the most stringent criteria shall apply.

⁴ <https://lf-public.deq.utah.gov/WebLink/ElectronicFile.aspx?docid=459609&eqdocs=EDO-2024-000046&dbid=0&repo=Public>

X. Public Notice and Comments

As Stated in UAC R317-15-5., this Certification decision is subject to a 30 public notice period. After considering public comments, the Director may execute the Certification issuance, revise it, or abandon it.

- A. Public Notice Dates:
- B. Public Notice Comments/Response:
- C. During finalization of the Certification certain dates, spelling edits, and minor language or formatting corrections may be completed. Due to the nature of these changes, they are not considered major and the Certification will not be Public Noticed again.

XI. Water Quality Certification

The Utah DWQ certifies that if the Project Proponent adheres to the conditions outlined in this Certification and adheres to any USACE Section 404 Permit Conditions, then the Project will comply with water quality requirements and applicable provisions of the CWA 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).

Candice Hasenyager, P.E., Director

Date

DWQ-2026-001223

