

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

Section 401 Water Quality Certification No. DWQ-2023-03003

Project Proponents: Robert Miller
President, Symphony Development, Inc.
111 South Frontage Rd.
Centerville, Salt Lake City 84014

Project: Symphony Development, Inc. (Project Proponent) is proposing to fill a total of 0.5 acres of palustrine emergent wetlands to complete Phase 4 of the East Ridge Development project (Project). The purpose of the proposed Project is to develop additional single-family homes within an existing residential subdivision. The project proponent indicated that the proposed Project is needed to meet Farmington City's demand for additional single-family homes and improve local and emergency access to the existing subdivision. The Project Proponent proposes to create nine residential building lots and extend 1500 South Street and 50 West to access the development. The proposed Project will also include; installing gas, electrical power, sewer, stormwater, land drains, culinary water, utility lines, and curbs and gutters. The proposed Project area is 8.44 acres, with approximately 3.38 acres of land being disturbed for construction. The Project Proponent proposes that 2,728 cubic yards of clean fill material will be placed in 0.42 acres of palustrine emergent wet meadow wetlands and 0.08 acres of palustrine emergent wetlands. The proposed project will permanently impact a total of 0.5 acres of Waters of the U.S. (WOTUS). The Project Proponent stated that the project was designed to minimize the impacts of the development. A total of 5.06 acres containing 2.48 acres of wetlands of the proposed project area will be left undisturbed as green space. The Project Proponent will utilize Best Management Practices to minimize the project impacts. To compensate the WOTUS loss, the Project Proponent proposes acquiring 0.75 acres of emergent wetland mitigation credits from Machine Lake Mitigation Bank. This proposed mitigation will equate to a 1:1.5 mitigation compensation ratio.

Location: The proposed project will be located in Davis County at 1500 South 50 West Farmington, Utah. The location of the project is at 40.955203°, and -111.887677 degrees.

Watercourse(s): The project will permanently impact 0.42 acres of palustrine emergent wet meadow wetlands and 0.08 acres of emergent wetlands in the Weber River Watershed.

USACE Section 404: SPK-2019-00841

Effective Date: Month, Day, Year

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I. Definitions

- A. **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.
- B. **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.
- C. **Category 1 Waters** are "*Waters which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as Category 1 Waters.*" UAC R317-2-3.2
- D. **Category 2 Waters** "*are designated surface water segments which are treated as Category 1 Waters except that a point source discharge may be permitted provided that the discharge does not degrade existing water quality.*" UAC R317-2-3.3
- E. **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.
- F. **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.
- G. **Level I Antidegradation Review (ADR):** "*is conducted to insure that existing uses will be maintained and protected.*" UAC R317-2-3.5
- H. **Project Proponent** "*means the applicant for license or permit or entity seeking certification.*" 40 CFR §121.1.
- I. **Protection Category:** "*Utah's surface waters are assigned to one of three protection categories that are determined by their existing biological, chemical and physical integrity, and by the interest of stakeholders in protecting current conditions.*" Utah Antidegradation Review Implementation Guidance (V 2.1)
- J. **Temporal Loss:** "*is the time lag between the loss of aquatic resource functions caused by the permitted impacts and the replacement of aquatic resource functions at the compensatory mitigation site.*" 40 CFR 230.92
- K. **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
- L. **Waters of the United States (WOTUS)** means waterbodies subject to the provisions of the Clean Water Act.
- M. **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
- CY – cubic yards
- DEQ – Utah Department of Environmental Quality
- DWQ – Utah Division of Water Quality
- EPA – Environmental Protection Agency
- LOP – Letter of Permission
- mg/L – milligrams per liter
- MS4 – Municipal Separate Storm Sewer System

NEPA – National Environmental Policy Act
NOI – Notice of Intent
PEM – palustrine emergent wetland (saturated)
PEM1E-palustrine wet meadow wetland (seasonally flooded/saturated)
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
WOTUS – Waters of the United States

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 Symphony Home Development, Inc. for the proposed Phase 4 of East Ridge Development Project (Project) in Farmington City, Davis 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 R317-15-6.1.A.2. or "*fails to meet the antidegradation (ADR) requirements of Section R317-2-7*" UAC R317-15-6.1.A.3.

The Utah Department of Water Quality (DWQ) participated in an interagency pre-filing meeting for the proposed project Phase 4 East Ridge Development on May 19, 2020. DWQ received a complete Section 401 Certification Application from Dennis Wanger, on behalf of Symphony Development, Inc on March 28, 2023. On March 30, 2023 Nicole Fresard at the USACE Sacramento District established the reasonable period of time for a Certification decision to be 90 days from March 28, 2023. This requires that the Director act by June, 26 2023.

IV. Background

A. Project

Symphony Development, Inc. (Project Proponent) is proposing to complete East Ridge Phase 4 (Project) of the Farmington City-approved master plan for the East Ridge Estates single-family homes residential subdivision. Phases 1 and 2 of the East Ridge Development were completed with no impacts to wetlands.

Phase 3 of the development impacted 0.49 acres of wetlands which was authorized by USACE Nationwide Permit SPK-2003-50015 on July 10, 2017. The Project Proponent proposes the construction of nine residential building lots, the extension of 1500 South Street and 50 West Street, and an ingress/egress of the site to provide access to the Phase 4 project area. Phase 4 of the proposed Project will include the installation of utility lines, gas lines, electrical power systems, stormwater piping, land drains, culinary water, and secondary water sewers for the development of the subdivision. The Project Proponent indicated that the project is needed to meet the demand for additional residential housing in Farmington City. The Project Proponent also indicated that the proposed Project will help improve local and emergency access to the existing subdivision.

B. Impact

The area of the proposed project is approximately 8.44 acres. 3.38 acres will be disturbed by the construction of the total project area for the project. The Project Proponent proposes that 2,728 cubic yards of clean fill material will be used to fill 0.42 acres of palustrine emergent wet meadow wetlands and 0.08 acres of excavated storm ditch containing palustrine emergent wetlands. The fill would result in a permanent loss of 0.5 acres of WOTUS. No streams or channels are on or adjacent to the proposed Phase 4 project area.

C. Alternatives/Minimization

The Project Proponent stated that the Project has been designed to minimize wetland impacts to the extent reasonable considering project cost, logistical constraints, and technological constraints. The Project Proponent proposes that the wetland areas selected for the proposed development were lower-quality wetlands. The proposed Project will leave 5.06 acres of land undisturbed for open space on the project area which includes 2.42 acres of wetlands. BMPs will be utilized during construction of the proposed project to minimize erosion, and reduce sediment disturbance impacts. Silt fencing will be used as perimeter control to reduce the impacts to the wetland areas that border the project area. Disturbed soil and the perimeter of the project's hardscape will be revegetated with a native grass seed mix. The contractors employed for the construction of the proposed project will acquire a Utah Pollutant Discharge Elimination System (UPDES) General Construction Permit, as well as, prepare and implement a Storm Water Pollution Prevention Plan to reduce the project impacts.

D. Mitigation

Compensatory Mitigation proposed by the Project Proponent is the acquisition of wetland mitigation credits. The Project Proponent proposes to acquire 0.75 acres of emergent wetland mitigation credits from the Machine Lake Mitigation Bank to replace the 0.5 acres of wetland impacts. Compensatory Mitigation will be at a 1:1.5 ratio.

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 Total Maximum Daily Loads (TMDLs): N/A

3. Antidegradation Review

The PEM wetlands are considered Category 3 waters 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.

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, sediment 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. 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.
- D. 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

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

² <https://documents.deq.utah.gov/water-quality/stormwater/construction/DWQ-2020-013890.pdf>

³ <https://documents.deq.utah.gov/water-quality/permits/updes/DWQ-2019-005143.pdf>

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.

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. 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)

D. 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. Disclaimers

A. Fees

1. The legislatively-mandated fee for the 2023 fiscal year is \$110.00/hour for review and issuance of the Section 401 Water Quality Certification. A quarterly invoice will be sent and your payment is due within 30 days.

B. Disclaimers

1. 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.
2. 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.

3. 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.

IX. Public Notice and Comments

As Stated in UAC R317-15-5., this Certification decision is subject to a 30 public notice period. Per UAC R317-15-5 draft certification decisions are subject to a thirty (30) day public notice. UAC R317-15-5.1 allows for the 30 public notice period to be lengthened or shortened for a good cause, which includes those projects that are routinely granted and any proposed activity is considered minor. The project proponent is seeking a Letter of Permission (LOP) through the USACE. The DWQ typically views these impacts as minor compared to USACE Standard Permits and have routinely granted these types of certifications. Therefore, the DWQ has reduced the public notice permit to 14 days (2 weeks). After considering public comment, the Director may execute the Certification issuance, revise it, or abandon it. Public Notice Dates:

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

X. Water Quality Certification

The Utah DWQ certifies that if the Project Proponents adhere 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).

John K. Mackey P.E., Director

Date

DWQ-2023-006315